Office Supreme Court U. S.
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JAMES H. McKENNEY
Clerk

No. 248.

Brief of Dill for Appt. (Reply)

Filed Oct. 30, 1899.

Supreme Court of the United States

WILLIAM CRAWFORD, Appellant, AGAINST WILLIAM L. HUBBELL, as Treasurer of the Adams Express Co., Appellee.	October Term, 1899. No. 248.

Replying Brief on behalf of Appellant.

There are several points suggested by the answering brief of the appellee which are perhaps worthy of further consideration.

These we will state separately:

I.

The claim of the Appellee as to injury in case it be compelled to pay the tax.

In various parts of the answering brief statements are made to the effect that if the tax is borne by the appellee, injury of the most serious nature to its business will occur.

Thus it is stated on page 3, "To the Express Companies the case is one involving almost their existence." (See also pages 17 and 18.)

These observations are not based upon anything contained in the present record.

In reference to them we only desire to observe that there is absolutely no reason why any presumption should be indulged in to the effect that this tax, if paid by the carriers, would reduce their profits to an unreasonable figure. In fact, the presumption, as we have pointed out in our principal brief, is exactly the other way.

On page 21 this argument is attempted to be strengthened by the statement that it must be assumed that the old rates of the companies were reasonable, and that if the companies were now compelled to accept twenty-four cents in lieu of a former reasonable charge of twenty-five cents, the reduction must be presumed to be unreasonable.

There seems to be no ground whatever for any such assumption.

Its net profits prior to the tax law may have been, for anything we know to the contrary, anywhere between six per cent. and sixty per cent. per annum. As to this the record is silent.

And if, as a matter of fact, it had been earning at the rate of sixty per cent. per annum and those earnings were cut down by the War Revenue Law to fifty-seven and a half per cent. as a consequence of a burden which Congress intended to impose upon them, that fact alone would not enable the carrier to claim as a matter of law that its reduced earnings had now become unreasonably small.

II.

As to any presumption arising from the fact that the tax is a stamp tax.

It is suggested in pages 6 to 10 of the brief that

the fact that this tax is a stamp tax raises the presumption that it was not intended to be imposed on the carrier.

We have already shown in our principal brief that the tax relating to express shipments imposed by the law of 1862 was intended to be placed upon the Companies, and not to be a mere shifting tax.

And since this tax, like the present one, was a stamp tax, that fact alone is sufficient answer to the appellee's argument in this regard.

III.

The question as to whether this tax would be a direct tax if intended to be borne by the companies.

On page 11 the appellee suggests that our argument would lead to the conclusion that this tax is a direct tax and is unconstitutional.

It is not necessary at the present time to argue extensively the question as to whether or not this result would follow if our views of the law were adopted. We are wholly unable to see any constitutional objection to the levying of a tax in the nature of a license or occupation tax upon such businesses as that of a common carrier. This certainly can be done by the States, unless in violation of the United States Constitution (103 U. S., 344), and by the United States within the scope of its power of taxation (9 Wall., 41 ; 16 Wall., 36 ; 5 Wall., 462).

But, aside from this, it remains to be observed that if we are right in our interpretation of the statute, then, even though the intent of Congress may have been to do an unconstitutional act, that fact is no warrant for the placing of the burden of

the tax upon shoulders that were not intended to bear it.

If, as between the carriers and the Government, the tax were unconstitutional, there is ample remedy for the carrier, but this remedy does not lie in the direction of compelling the shipper to pay the tax.

IV.

The effect of Section 6 of the Act.

In point IV of the answering brief the appellee lays the greatest stress on Section 6, which we have already discussed to a certain extent in our principal brief. It claims that the provision of this section to the effect that the tax shall be paid "by any person or persons or party who shall make, sign or issue the same, or for whose use or benefit the same shall be made, signed or issued," includes in the case of express shipments the carrier on the one hand as the person who issues the receipt, and the shipper on the other as the person for whose use or benefit it is issued.

In addition to the arguments we have already advanced in our principal brief upon this point, there are certain further considerations to which we invite the Court's attention. These are as follows:

(1.) The Statute does not say that the tax shall be paid either by the party who issues the receipt *or by the party to whom it is issued.*

The second alternative specified in the section requires *more than the mere acceptance* by one party to the transaction of a document which the other party issues. It does not even require any acceptance at all of this document.

The only thing which is essential is that it should

have been issued *for the use or benefit* of a party other than the one who actually issued it.

(2.) This alternative would only apply to the party who receives a document in the event that it was actually beneficial or useful to him.

This manifestly would not apply to cases like the present where the document is issued pursuant to the peremptory requirement of the Government as a means of ensuring the collection of the tax wholly irrespective of the interests or desires of the person to whom it is issued.

(3.) When we compare this provision with the other items of Schedule A, it is clear that in the greater part of the instances mentioned the transactions cannot take place without the issuance of a document for the use or benefit of the other party to the transaction—*i. e.*, as in the case of insurance policies, promissory notes, bonds, etc., etc. The only reason why such documents are issued is for the use and benefit of the other party to the transaction and because they are desired by such party; and in regard to such instruments as are optional between the parties and which are not compelled to be issued by the Government, there is no reason why the payment of the expense should not be left to the agreement of the individuals.

But when we take the case of a document whose existence is peremptorily required by the Government and in regard to which the parties have no option whatever, even though it may not be required by one party to the transaction for his own use or benefit, we find a case to which the second alternative of Section 6 does not apply, and in which only the first alternative,—to wit: that the tax must be paid by the party who issues—remains.

V.

The statement of the Appellee as to the former war revenue law.

On page 36 the appellee attempts to distinguish the two War Revenue Acts.

We think it certainly is not too much to say that he wholly fails to do so.

And as to one point there is an erroneous statement which is of importance, as follows:

> "But more than this, by a separate section of the Act, the companies were directly required to affix the stamp."

The language of the original statute upon this point is as follows:

> "Without delivering to the consignor thereof a printed receipt having stamped or affixed thereon a stamp denoting the duty imposed by this act, *or* without affixing thereto an adhesive stamp or stamps denoting such duty."
>
> Laws 1862, Chap. 119, Sec. 105.

In other words, a distinct alternative was provided by the act, and the companies had the option either of affixing the stamp themselves or of delivering a receipt having upon it the stamp in question; *and there was no provision anywhere as to who should pay for the stamp.*

And yet it was, as we have already shown, considered by all parties, even by the Express Companies themselves, that the former statute imposed the tax upon them.

There is absolutely no valid ground upon which the two laws can be distinguished; and it is beyond question that the present act was formed upon the old one, and should be interpreted in its light.

VI.

The authorities cited by the appellee.

Especial reliance seems to be placed upon the cases cited in pages 13 to 16 of its brief.

Of this the principal one is the *State Freight Tax Case*, 15 Wall., 232.

This case, however, so far from being an authority in favor of the appellee is of importance in establishing our own contention.

The language cited on pages 14 and 15 of the answering brief does not lay down, as the appellee suggests, the broad proposition that any tax intended to be levied upon a common carrier may at his will be shifted upon the shipper.

The proposition which is enunciated is that *the particular tax then under consideration* might be shifted by the carrier upon the shipper.

And the particular tax then under consideration had, in the preceding portion of the Court's opinion, *been expressly held not to be a tax upon the carrier, but to be intended to be imposed upon the shipper;* and in reaching this conclusion the Court was largely influenced by the existence in the tax statute of just such a provision as that which we have alluded to in our principal brief as existing under the former railway gross receipt tax law—*i. e.*, the provision permitting carriers to increase their rates by the amount of the tax levied.

As to this, the Court said:

> "Evidently this contemplates a liability for the tax beyond that of the company required to pay it into the Treasury, and which authorizes the burden to be laid upon the freight carried, in exemption of the corporation owning the roadway. *It carries the tax over beyond the carrier to the thing carried.*"

Since, therefore, it is clear that the question as

to the party upon whom such a tax is intended to be laid depends largely upon the existence or non-existence of a special authority to the carrier to transfer the tax to its customers, and since no such provision exists in the present statute, it is submitted that the argument upon this point in our principal brief receives great emphasis from the authority relied upon by our adversaries.

It is interesting to also note in this connection that a similar provision was inserted in the Statute of New York, imposing a tax upon the masters of vessels, based upon the number of passengers which they might land, but expressly allowing the masters to collect this tax over from the passengers. This was the Statute under which the celebrated *Passenger Case*, 7 How., 283, arose, and the form in which it is drawn is an additional argument in support of our contention.

Before leaving this point, we wish to call the Court's attention particularly to the case of

Commonwealth v. *The Railroad Company*, 145 Pa. St., 38,

decided in 1891 by the Supreme Court of Pennsylvania, it being from Pennsylvania that the State Freight Tax Case relied upon by the appellee came to this Court.

In the decision above mentioned the State of Pennsylvania imposed a gross receipt tax upon corporations owning lines and collecting tolls for their use. This was attacked by them as being unconstitutional, and the question arose as to the meaning of the law, and the party by whom the burden was intended to be borne, and as to the right of this party to transfer the obligation at will upon others.

As to this point the Court said :

> " It is certainly not a tax direct or indirect upon the toll-paying corporation, for the State demands nothing from it on this account. The

demand is solely upon the toll-receiving corporation, and, if it be that the burden lies upon the toll-paying corporation, it must be because the price which it may be asked to pay as such toll may be increased by reason of the tax imposed upon the receiving corporation. *But the latter has no power of itself to shift the burden upon the other. This may, of course, be done by agreement. But the making of such agreement is optional with the two corporations, and otherwise the tax lies where it falls.* It seems to us, therefore, that as the tax upon the toll does not either by force of the statute itself, or by the necessity of the case, reach the toll-paying corporation, it cannot be said to lay a burden upon the business done by that corporation."

In other words, we have here a definite reaffirmance by this Court of the principle which we have outlined more in detail in our main brief, to the effect that *only by voluntary agreement* can a carrier shift upon the shoulders of another a burden which the Legislature has intended to place upon it alone, and that in the absence of such an agreement it cannot by its own act effect its own release.

In *Crandall* v. *Nevada*, 6 Wall., 35, the tax was expressly imposed upon the individuals traveling, as was held by this Court, and the decision has no application whatever to the case at bar.

The other cases cited need no special attention. In none of them does there appear anything adverse to the positions which we have taken.

Almost without exception they were cases involving the question of constitutionalty of taxing Acts. In none of them, so far as we have been able to find did any question between a shipper or

a citizen on the one hand, and a carrier on the other, arise.

And we have searched in vain in the opinions for any statements which would even tend to support the right now claimed by the appellee, to shift, of its own volition, upon the shoulders of another, burdens intended to be placed upon it alone.

VII.

As to Penalties.

Our adversary appears to be under a misconception, on page 28, in stating that our main reliance appears to be placed upon the penalty clause in the express paragraph.

These provisions as to penalties are all indicative of the intention of Congress as to the person by whom the act was intended to be done, and we have alluded to them merely in that connection as showing that in all cases penalties were imposed upon the carrier and not upon the shipper.

VIII.

As to the Tax being a Regulation of Commerce.

On page 23 our adversary has construed our principal brief as attempting to support our contention on the theory that the War Revenue Act was an act regulating commerce. This is erroneous.

We have alluded in our brief to the presumptions established in many cases in which regulative statutes were considered, as analogous to those which must apply here.

But we did not base our argument at all upon the claim that this statute is anything other than it purports to be, to wit, a tax act, and that Congress has power to place this tax where it will.

IX.

As to the absence of any franchise in the Appellee.

On pages 19 and 20 of its brief, some stress is laid upon the fact that the present appellee enjoys no franchise, being simply a joint stock association.

It is thus argued that there is no particular reason why any particular tax should be levied upon it.

It must be kept in mind, however, that the question certified is not limited to this particular appeal, but applies to all carriers.

And it is a fact too clear for argument that of the railways, steamboat companies, express companies, and other carriers doing business in the United States by far the greater portion are corporations not only exercising the franchise of being corporations, but also availing themselves of franchises in the highways of the United States, or of the right to take private land for their purposes by the exercise of the right of eminent domain.

And since the duties of all classes of carriers are bound together in this one paragraph, it follows that any answer to the question certified will affect not merely the present appellee, but every other carrier within the limits of the United States.

And as we have shown in our principal brief, if the appellee be exempted from taxation by reason of the interpretation placed upon this particular section of the Act by this Court, precisely the

same ruling will exempt from the same burden all of the immense amounts of capital engaged in the carrying business throughout the United States.

We do not, of course, mean to say that we consider the existence of a franchise of any sort necessary in order to support our argument, for we hold that the Congress of the United States has full power to impose a tax if it pleases upon any occupation and all parties engaged therein, whether or not such occupation involves the enjoyment of a public franchise.

And we also claim that in this particular instance, it has been the intention of Congress to place such a tax upon the business specified in this paragraph of the Statute.

Respectfully submitted,

FREDERIC R. KELLOGG and JAMES B. DILL.
Of Counsel for Appellant.

IN THE

Supreme Court of the United States.

WILLIAM CRAWFORD,
Appellant,

AGAINST

WILLIAM L. HUBBELL, as Treasurer of the Adams Express Company,
Respondent.

October Term,
No. 248.

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SOUTHERN DISTRICT OF NEW YORK, }
County of New York, } ss.:

JAMES B. DILL, being duly sworn, deposes and says: That he is of counsel for the appellant in the above entitled action, and is fully conversant with the facts of said case; that the appellant does not join in the motion to adjourn this cause, but desires that the same should be heard, if the Court will permit, on the day for which it was originally set, to wit, the second Monday of October, 1899, and requests the Court to deny the motion for the adjournment.

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The motion papers upon this application have only been served on this 7th day of October.

JAMES B. DILL.

Sworn to before me this 7th day of October, 1899.

HENRY SCHOENHERR, Jr.,
Notary Public,
Kings County.
Certificate filed in New York Co.

[SEAL.]

SUPREME COURT OF THE UNITED STATES

October Term, 1916.

William Crawford,
Appellant,

against

William L. Saxbell, as Treasurer of the Adams Express Company,
Appellee.

Term,
No. 148

BRIEF IN BEHALF OF HAMILTON-BROWN SHOE COMPANY AND OTHERS

PRESENTED BY LEAVE OF THE COURT

HARVEY L. GRIFFITH
Of Counsel

Supreme Court of the United States.

WILLIAM CRAWFORD, Appellant,	
AGAINST	17,345. October Term 1899.
WILLIAM L. HUBBELL, as Treasurer of the Adams Express Company, Appellee.	No. 248.

BRIEF PRESENTED BY LEAVE OF THE COURT IN BEHALF OF HAMILTON-BROWN SHOE COMPANY AND OTHERS.

By leave of Court duly obtained, The Hamilton-Brown Shoe Company and others, who are relators in a petition for a writ of mandamus against Wells, Fargo & Company, pending in the Supreme Court of the State of Missouri, in which action are involved substantially the issues in this cause, hereby respectfully submit the following statement, points and argument.

Statement.

The charge against the express companies is that since July 1, 1898, they, being common carriers, have continuously refused, and are still refusing to accept express packages for transportation, except upon condition that shippers attach the revenue

stamps required by the War Revenue Law to be attached to express receipts, or furnish to the companies the money with which to pay for such revenue stamps.

The sections of the United States War Revenue Law, specially relating to the issues involved, are as follows:

> "SECTION 6. That on and after the first day of July, eighteen hundred and ninety-eight, there shall be levied, collected and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters and things mentioned and described in Schedule A of this Act, or for or in respect of the vellum, parchment or paper upon which such instruments, matters or things, or any of them, shall be written or printed by any person or persons, or party who shall make, sign or issue the same, or for whose use or benefit the same shall be made, signed or issued, the several taxes or sums of money set down in figures against the same, respectively or otherwise specified or set forth in the said schedule."
>
> * * * * * *
>
> "SECT. 7. That if any person or persons shall make, sign, or issue, or cause to be made, signed, or issued, any instrument, document, or paper of any kind or description whatsoever, without the same being duly stamped for denoting the tax hereby imposed thereon, or without having thereupon an adhesive stamp to denote said tax, such person or persons shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than one hundred dollars, at the discretion of the Court, and such instrument, document, or paper, as aforesaid, shall not be competent evidence in any Court."

Schedule A.

* * * * *

"EXPRESS AND FREIGHT: It shall be the duty of every railroad or steamboat company, carrier, express company, or corporation, or person whose occupation is to act as such, to issue to the shipper or consignor or his agent, or person from whom any goods are accepted for transportation, a bill of lading, manifest, or other evidence of receipt and forwarding for each shipment received for carriage and transportation, whether in bulk or in boxes, bales, packages, bundles, or not so inclosed or included; and there shall be duly attached and cancelled, as is in this Act provided, to each of said bills of lading, manifests, or other memorandum, and to each duplicate thereof, a stamp of the value of one cent: *Provided*, That but one bill of lading shall be required on bundles or packages of newspapers when inclosed in one general bundle at the time of shipment. Any failure to issue such bill of lading, manifest, or other memorandum, as herein provided, shall subject such railroad or steamboat company, carrier, express company, or corporation or person to a penalty of fifty dollars for each offense, and no such bill of lading, manifest, or other memorandum shall be used in evidence unless it shall be duly stamped as aforesaid."

ARGUMENT.

The express companies take the position that the War Revenue law does not, in terms, impose a tax upon them, and that even if the tax were so imposed, there is nothing in that law to prevent them from demanding of the shipper in the first instance the money with which to pay the tax. They claim, in effect, that while the Federal Government has expressly imposed a tax on the transaction between

the express company and the shipper, the question as to who shall pay the tax is left open; that by the very terms of the act, it may be paid by either of the parties.

Our answer is: 1st. The Revenue Law expressly requires the companies to pay the tax. 2d. While that statute does not forbid the collection of the money from the shipper wherewith to pay the tax, another law, which is of binding force, does forbid its collection by the method which the companies have adopted.

The revenue law does not, either positively or negatively, point out the sources from which the persons taxed are to get the means with which to pay the taxes. It is silent on this point, and revenue laws generally are silent on this point.

POINT I.

The War Revenue law in terms imposes the tax in question upon express companies.

If it be admitted that the tax is on the *transaction*, as claimed by the companies, it may still be true that the obligation to pay rests upon some specific person. The Congress realized that the transaction in question was one to which the express companies, as common carriers, were required by law to become parties if the public wished to become shippers. The case was not one of simple contract, as in the sale of land or stock. If the merchant wanted his package shipped, the express company was obliged to receive it and carry it to its destination. This duty of the carrier is imposed by law, and grows out of the relation sustained by the carrier to the public. Congress was legislating in respect to this situation.

Here was a transaction it would be well to tax, and the stamp tax seemed to be the best form of taxation. What, then, could be stamped? Usually, there was a memorial of the transaction in the form of a receipt given by the express company to the shipper. This memorial was usual, but it was not necessary. So far as the law was concerned, the parties might agree to omit this customary memorial of the transaction. It seemed necessary, therefore, that Congress should require the issuance of a receipt as written evidence of the transaction, in order that there might certainly be a document in every case to which a revenue stamp might be affixed.

By state law, there was already a legal obligation on express companies to receive and carry express matter duly tendered for carriage, and now by Federal law there was a new legal obligation imposed, requiring the company to issue a receipt to the shipper for every package received.

In order that the further purpose of Congress, viz., the collection of revenue, might be accomplished, there was the additional requirement that every receipt so issued should have a one cent stamp affixed to it, and that the same should be duly canceled.

Here, then, are several distinct legal obligations: 1st. Express companies must receive and transport packages duly tendered. 2d. They must issue receipts in every case. 3d. To every receipt must be affixed a stamp, and the stamp must be duly canceled.

By the practice of the companies, they seem to concede their obligation to affix and cancel the stamps. They *do* affix and cancel them. It would seem that they merely insist that they are not under legal obligation to pay for them. In the view of the companies, it is clearly one thing to affix and cancel a stamp, and another things to pay for the stamp.

The interesting inquiry now, is this: Is the legal

obligation imposed by Congress on the companies broad enough to include the requirement that they shall pay for the revenue stamp which must be affixed to the receipts they issue?

Ordinarily one would think that a law requiring a person to affix a revenue stamp, includes the requirement that such person shall pay for it.

It might also well be supposed that if one made it a practice to affix and cancel revenue stamps, he considered the affixing and cancellation of the stamp a legal duty.

But let the statute itself be interpreted.

We do not look to the Express and Freight paragraph in Schedule A to find the provision imposing the duty to pay the express tax. The object of that paragraph is to impose the duty of issuing the receipt, and, furthermore, to fix the amount of the tax to be paid upon the transaction.

The first paragraph of Section 6 of the Act, having reference to the entire catalogue contained in Schedule A, makes the provision which is decisive of the point in question.

Omitting words which need not be considered in this connection, the substantial provision of Section 6 is: That for and in respect of each document or instrument mentioned and described in Schedule A, the several taxes set forth in that Schedule shall be paid by the person who makes, signs or issues such document or instrument (or by the person for whose use or benefit the same is made, signed or issued).

And Section 7 provides that if any person or persons shall make, sign or issue, or cause to be made, signed or issued, any instrument, document or paper of any kind or description whatsoever, without the same being duly stamped for denoting the tax imposed by the act, or without having thereupon an adhesive stamp to denote said tax, such person shall be deemed guilty of a misdemeanor, and such unstamped instrument, document or paper shall not be competent evidence in any court.

As above stated, the purpose of the paragraph in

Schedule A referring to Express and Freight, was to impose the duty of issuing a receipt, in the case of every shipment, and to prescribe the amount of the tax. The purpose of that paragraph was not to designate the person who should be liable to pay the tax. It was wholly unnecessary to designate in any paragraph in Schedule A the person or persons who should be liable to pay the tax on documents.

It will be observed that, in the main, Schedule A is a catalogue of various kinds of documents and instruments, showing, in connection with each document or instrument, the amount of tax imposed upon it. The whole schedule is to be read with reference to the first paragraph of Section 6, which provides, in general terms, that in respect to each and every document named in that schedule, the prescribed tax shall be paid by the person making, signing or issuing the document, or by the person for whose use or benefit the document is made, signed or issued. There is no force, therefore, in the point made by the companies that in the paragraph of Schedule A, entitled, "Express and Freight," an impersonal form of expression is used in connection with the imposing of the duty to affix and cancel the stamp, to wit, the expression "and there shall be duly attached and canceled to each bill of lading, &c., a stamp." There is no significance to be attached to the impersonal form of expression. Two things are to be remembered in this connection: first, there was no occasion to use the personal form of expression, because Section 6 had already pointed out what person should be liable to pay the tax imposed, and, second, in connection with the impersonal form of expression, is the phrase "as is in this act provided"—clearly indicating that in another place the Act provides, once for all, how and by whom the required stamps shall be affixed and canceled.

When in Schedule A the subject of telephone messages is reached, since no documents are made ordinarily in connection with such messages, and it

seemed impracticable to require documents to be made in connection therewith, the tax upon the messages is placed directly upon the person, firm or corporation owning or operating the telephone line. This provision indicates clearly that it was in the mind of Congress to tax these quasi public corporations in respect to their very profitable transactions with the people. In the case of the Telephone Company, there was usually no document issued, and the Act required none; hence it became necessary to provide in Schedule A that as to these transactions the tax should be paid by the company. In the case of the Express Company, on the other hand, there was usually a document issued, and the Act required the issuance of one; hence there was no necessity to make provision in Schedule A for the payment of the express tax, since it had already been provided in respect of all documents named in that schedule that taxes in respect to the same should be paid by the persons signing, making or issuing them.

The companies have not overlooked Section 6. They cannot eliminate it and they cannot ignore it. They, therefore, in the true spirit of philosophy, seek to extract comfort from it.

We quote a few words from a memorandum prepared by Messrs. Carter & Ledyard, of New York, in behalf of the express companies. They say:

> "We have yet, however, to refer to the controlling provision of the Act, which leaves this matter no longer one of construction, but which declares in express terms that the tax may be paid indifferently either by the carrier or the shipper.
>
> Section 6 provides: "That on and after the first day of July, 1898, there shall be levied, collected and paid (for and in respect of the several bonds, debentures or certificates of stock and of indebtedness and other documents, instruments, matters and things mentioned and described in schedule A of this Act, or for or in respect of the vellum, parchment or paper upon which said instruments, matters or things, or any of them, shall be written or printed) by any person or persons or party who shall make, sign or issue the same, *or for whose use or benefit the same shall be made, signed or issued*, the several taxes or sums of money set down in figures against the same respectively, or otherwise specified or set forth in said scedule.'
>
> The parentheses are our own. They are inserted to make the sense appear more clearly. This provision is a clear and unmistakable enactment to the effect that all the stamp taxes upon documents mentioned in schedule A shall be paid either by the person who issues the document—that is, the carrier—or by

> the person for whose use and benefit the same is issued—that is, the shipper.
>
> What more can be said? This provision is in complete accordance with the general and essential nature of such taxes. As was said in the early part of this memorandum, they are not imposed upon any particular persons or occupations. They are taxes upon commercial and business transactions which are evidenced by, or which consist of, documents. To each of such transactions there are of necessity two parties—one who makes the document, and the other for whose use and benefit it is made. The object of the government is revenue. The subject of the tax is the transaction; but it is a matter of absolute indifference to the government whether the cost of the tax is paid by one or the other party. So long as it receives the revenue from the transaction it is content. And the whole Act bristles with indications of this attitude of the government, namely, its complete indifference as to which party to the transaction pays the tax."

It cannot be seriously argued that the words "persons for whose use or benefit the document shall be made, signed or issued," are intended to designate shippers in their relations to express companies. These words are very familiar in the law. They are by no means strange or unusual terms.

If two persons have a transaction involving the delivery by the one to the other of a document, whether the same be a promissory note or deed or other contract, or a receipt, it cannot with any accuracy be said that the person receiving the document is the one for whose use and benefit it is issued. In such a connection the expression is utterly without force or meaning. These words are not used in legal terminology to import such a notion. They are words of *representation*, and do not apply to an *adversary* relationship. If one acts for another's use and benefit, he at least acts *for* that other—*on behalf of* that other.

A trustee acts for the use and benefit of a *cestui que trust*, but a grantor never acts for the use and benefit of a grantee. This is true, in a strictly legal sense, no matter how useful or beneficial a deed may be to the grantee. The transaction of sale, which goes to the essence of the deed, may be every whit as useful to the grantor as to the grantee, and more so.

The only *apparent* exception to the rule for which we are contending, is found in the case of Custom

House entries and manifests, the tax on which is doubtless payable by the owners of the goods. But here we have what might be called a unilateral transaction, involving no adversary relationship.

When Congress provided that the tax in question should be paid by the person signing the document, or by the person for whose use or benefit the document should be signed, one main purpose was in the mind of the lawmakers, viz., to lay the burden of the tax upon the principal, whether he actually made and signed the document himself, or made and signed it by an agent. The principal is the person for whose use and benefit an agent makes, signs and issues a document in connection with his principal's business.

Carrying out this idea, Section 7 provides that if any person shall make, sign or issue, or, *cause to be* made, signed or issued, any document without the stamp required by the Act, he shall be guilty of a misdemeanor. It is the principal in the case who is aimed at, whether he himself or his agent signs and issues the document. Section 7 construes the words "for whose use or benefit" employed in Section 6. Manifestly the person for whose use or benefit a document is signed or issued, referred to in Section 6, is the same person as the one who causes the document to be signed or issued, as the expression is in Section 7. The two are closely connected. Section 6 imposes upon certain persons the duty of paying a tax. Section 7 declares that if those persons evade payment, they shall be guilty of a misdemeanor. In the one section, the persons on whom the duty is imposed are described as the persons who sign or issue the documents, or for whose use or benefit the documents are signed or issued. In the other section, the very same persons are described as the persons who sign or issue the documents, or who *cause* the documents to be signed or issued. Persons who cause documents to be issued are principals acting through agents. It is equally true that those for whose use or benefit documents are issued are principals acting through agents.

Instead of saying, therefore, with Messrs. Carter & Ledyard, that the person who signs the express receipt is the carrier, and the person for whose use or benefit it is signed is the shipper, we ought to say that the person who signs is the carrier, and the person for whose use or benefit the signing is done, is likewise the carrier, represented, in the latter case, by an agent.

This interpretation of the words " for whose use or benefit " involves us in no contradictions or absurdities. Principals and their agents do not stand in adverse relations to each other in connection with the business of the principal which the agent conducts for him. It is reasonable to say that when an agent conducts a transaction for his principal, and there is a tax on the transaction, the principal shall pay it. In connection with a provision in a statute that one who makes, signs or issues a document, shall pay a tax thereon, it is reasonable to provide that if an agent makes, signs or issues the document, then the principal, for whose benefit he does it, shall be liable to pay the tax.

But it is wholly unreasonable to say, in a statute designed to fix a liability to pay a tax, that it shall be paid by the one party to the transaction, or by the other party to the transaction, especially where the particular transaction is one which, by law, one of the parties is bound to enter into, if the other party wishes it.

So evident is the intent of Congress to impose the tax on the person or company making, or causing to be made, the document, that in the paragraph of Schedule A relating to bills of exchange and promissory notes, it is provided that the provisions of this paragraph shall apply to original domestic money orders issued by the government of the United States. If the provisions apply to these money orders, who furnishes the stamp? The answer is: The government. But in order to make the provision effective to add to the government's revenue, it is instantly provided, furthermore, that the price of

the money order shall be increased by a sum equal to the price of the stamp. But the person to whom the money order is issued pays, not the tax, but an increased price for the money order.

Now, the obligation of the government to provide the stamp flows from the requirement of the Act that the provisions of the paragraph relating to bills and notes (having necessary reference always to Section 6), shall apply to money orders issued by the government.

The government does not pretend that the person for whose use or benefit a document, as, for example, a money order, is made, signed or issued, is the person to whom the same is issued and delivered.

Moreover, one of the chief purposes of Section 6 was to designate the person who should be liable to pay the tax. It may be true, as the companies insist, that the government is not concerned with the question as to who shall pay a given tax, so it is paid. But the government, in imposing a tax, will take care to fix upon a definite person the liability to pay it. The evident purpose of Section 6 of the Revenue Act is to accomplish this. But if the contention of the companies be correct, Section 6, while seeming to designate, does not, in truth, designate at all.

This section provides that the tax shall be paid by the person who makes, signs or issues the document, or by the person for whose use or benefit the document is made, signed or issued. In our view, the meaning of this provision is that the real maker of the document shall in any case pay the tax, whether he acts by himself or by his agent. The express companies argue that there are two parties to the various transactions represented by the documents named in Schedule A, and that the true meaning of Section 6 is that the tax is imposed, not upon the one party rather than the other, but indifferently upon either. Then, according to their contention, the solemn purpose of Congress, in employing this phraseology, was to enact that the tax should be

paid by the one party to the transaction or else by the other party to the transaction.

It seems to us unlikely that Congress would employ words manifestly intended to fix liability upon a definite class of persons, if it had no intention to fix the liability at all. If, as the companies contend, the intention of Congress was to leave the whole question of liability open, then there was surely no need of a provision in the law that the tax should be paid indifferently by the one or by the other of two adverse parties to the transaction.

The question whether A is solely liable to pay a given tax on a particular transaction is one thing. The question whether he may not reimburse himself by collecting the amount of the tax from the other party to the transaction, under a purely voluntary agreement with the latter, is quite another thing.

It may be freely admitted that, in the case of documents which the maker is not legally bound to issue, the amount of the tax may be demanded of the person to whom the document is to be issued, as a condition of the transaction. If the demand is refused, the only consequence is that the transaction fails, and this is not unlawful.

But this is not equivalent to saying that the duty to pay the tax rests, as a matter of law, indifferently upon either the one or the other of the parties to the transaction.

The burden may *ultimately* be made to fall upon the one or the other, according to the agreement of the parties, but the Government looks to the *maker of the document* for the tax.

If there be a legal obligation to issue a document (as, for example, a deed in pursuance of a binding contract to execute and deliver the same--or a lease in pursuance of a binding contract to renew an existing lease), then surely the law determines between the parties, whether the document (as, for example, the deed or the lease), under the contract

importing the obligation, shall be a stamped or an unstamped document, in the absence of any agreement between the parties as to which of them shall bear the ultimate burden.

Can he who is bound by contract to make and deliver a deed refuse to deliver a stamped deed upon the plea that the deed is *for the use and benefit* of the other party, and that therefore it is no more the duty of the grantor than of the grantee to furnish the stamp?

Where A makes a sale of land to B, and a deed is made as a memorial of the transaction, is it not idle to speak of the deed as being for the use and benefit of the one party rather than of the other party, in a legal sense?

For whose use or benefit is the transaction itself, to wit, the sale of the land? Presumably, for the use and benefit of both parties, in the ordinary sense of the terms, as distinguished from their legal significance?

The same is true of the deed, which is only the written evidence of the transaction. It must be remembered that these words, in their legal sense, would not be used at all in referring to such a transaction.

It may therefore well be said that, in every case, the party who makes and issues a document requiring a stamp (whether acting personally or by an agent or trustee) is bound, as between himself and the Government, to pay the stamp tax thereon.

If he is *under no legal obligation* to make and issue a given document, he may refuse to issue it, unless the other party to the proposed transaction will furnish the money wherewith to pay the tax.

If, however, he is *under a legal obligation* to make and issue a given document, and the same requires a stamp, then he may not lawfully demand the amount of the tax of the other party (entitled to receive the document) as a condition of issuing it.

Express companies are under a legal obligation to make and issue receipts, and therefore they cannot

lawfully demand of a shipper payment of the amount of the tax, as a condition of performing their legal obligation, already complete, to deliver a valid receipt upon due tender of the express package and the transportation charges.

POINT II.

Not the war revenue law, but the law of the State, forbids the express companies to compel shippers to pay the war tax on express shipments, as a condition of acceptance for transportation.

The Revenue Act, so far as it provides for stamp taxes on transactions evidenced by documents, takes effect only in case the transactions are had. There is nothing in the Act compelling persons to have any sort of transactions with one another. The transaction of selling land is taxed by the Act. A deed is always given as a memorial of this sort of transaction, and the deed must be stamped. But there is nothing in this particular law, or in any law, compelling men to sell or to buy land. The transaction by which a carrier receives from a shipper for transportation a package of merchandise is taxed by the Act. Under the Act, a receipt must be given by the carrier to the shipper, and this receipt must be stamped. There is nothing in this particular law compelling either shipper or carrier to have this sort of transaction.

But now appears the difference between this sort of transaction and the transaction of selling land. The common law and the statutes of many of the States (without any regard to the War Revenue Act) compel the carrier to receive from the shipper,

for transportation, his package, when the shipper makes proper tender.

There is no comfort for the express companies in the opinion given by the Attorney General of the United States that "in controversies arising between shippers and express companies as to which one shall be required to bear the expense of the stamp, the Government has no direct concern under the War Revenue Law."

There is no more comfort for them in the opinion given by Commissioner Scott, in which he said: "If the carrier refuses to accept the goods for transportation, except on condition that the owner or shipper shall pay the sum necessary to purchase the stamp, or stamps, in addition to the customary charge for the transportation, the War Revenue Law provides no remedy, nor does any internal revenue law. It would seem that in such cases the aggrieved parties must depend upon the common or statute law of the State defining the obligations of common carriers."

This statement of Commissioner Scott's is an accurate statement of the situation.

In terms, the revenue law only requires the express company to issue a receipt to the person from whom the goods are accepted for transportation. If there were no other law in the case but the revenue law, the express companies might well say to any person offering goods for shipment: "Your goods will not be accepted for transportation unless you furnish the price of the stamp, which must be affixed to the receipt which we are compelled to issue to you upon acceptance of your goods."

If there were no law affecting the case but the revenue law, the companies might say to persons tendering goods for shipment: "Your goods will not be accepted for transportation unless you first pay the cost of printing or lithographing the receipt which, under the law, we are compelled to give you when we accept your goods."

Any condition might be imposed on the shipper by the carrier (as any condition may be imposed upon the would-be buyer of land by the seller in advance of the sale), if there were no law controlling the parties, except the War Revenue Law.

This attempted exaction from the shippers of money with which to pay taxes, as a condition of accepting goods for shipment, is no less unlawful than an exaction of money with which to pay any other specific expense of the company as a condition of acceptance of goods for shipment.

If the express companies will obey the law of the State, which commands acceptance of goods for transportation upon tender of the rate, then the War Revenue Law will at once become operative. When the goods are once accepted for transportation, then follows the obligation under the revenue law to issue a receipt, and the further obligation to affix a stamp to the receipt. In order that there may be no doubt as to who is bound to perform this latter duty, the Act specifically provides that it shall be done by the party issuing the receipt, or (according to our interpretation), in cases where agents issue the receipt, by the principal for whose use or benefit the agent acts.

POINT III.

It will not avail the express companies to claim that they have merely exercised their right to advance rates.

The final position taken by the express companies has been thus set forth by their legal exponents: "It would make little difference in fact, if the statute had, in express terms, required the carrier to affix the stamp and pay for it. The effect of such a

burden would simply have been to increase the cost of carriage and the carrier would have an undoubted right to raise his rates to meet such increased cost. In view of this consideration, the discussion in which various merchants' associations have indulged, as to whether the Act intends to impose upon the express companies the duty of paying the tax, becomes purely academical. If they were right, it would not avail them, for the answer is that the carrier has simply raised his rates, and has demanded an increase of his compensation for the carriage equal to the increased cost—a thing which he has a very clear right to do."

If, then, we are right in all our foregoing conclusions, we have gained nothing. Our argument is purely academical. The express companies have simply raised their rates.

It may be worth while to offer a mild protest against this peremptory disposition of the shippers' rights.

The express companies have not raised their rates.

The one cent demanded of each shipper is not demanded as part of the rate. The agents of the companies do not pretend that this special charge is part of the rate. Indeed, it has been urged by the companies that since they were under contract to pay about 45 per cent. of their gross receipts from express charges to the railroad companies, it would be less burdensome to shippers, and the public generally, to pay the war tax on express packages directly, by furnishing the stamps, than to have the rates increased to cover the cost of the stamps. The argument is that if the rates were raised it would be necessary to increase the revenues of the companies by about twice the amount of the tax, since about half the increase would be payable to the railroad companies under their contract with the express companies.

Furthermore, assuming the rates as they existed prior to July 1st to have been reasonable, it is not

reasonable to increase all rates by the uniform addition of one cent to each particular rate.

This method of increase cannot be successfully defended on the ground that each particular shipment costs the express company just one cent more than it cost before the War Revenue Law went into effect. As between the United States and the express company, the significant fact is not the one cent stamp on each particular receipt. The significant thing is the aggregate revenue to the government and the aggregate expense to the express company. The benefit to the one and the burden to the other are measured, it is true, by the number of express packages shipped, reckoning the amount to be paid at the rate of one cent per package, but the only consideration which is of serious importance to either party is the aggregate tax. If the law had provided that the companies should pay to the government a tax, the amount of which should be ascertained by dividing the whole number of packages shipped by 100, and by expressing the result in terms of dollars, the companies and the government would have the same situation to deal with that actually exists under the law as it is.

From the government's standpoint the true reason for the stamp tax in the form in which it is imposed is that it means quick revenue, since the stamps must be bought in advance of the transactions which are taxed; and, in the second place, the difficulties of inspection are reduced to a minimum.

The stamp tax is preferable to a tax on gross revenues, for the reason that the payment of the latter tax must await the earning of the revenues, and the computation must, in the nature of the case, be left largely in the hands of the persons taxed.

When we come to the question of reimbursing the express companies, it must be remembered that their relation to shippers is largely determined and regulated by law. The shipper is not required to pay the carrier anything beyond the rate charged for the carriage, and for such other service as is ren-

dered by the carrier in connection with the carriage. Rates must be reasonable, and they must bear a more or less definite relation to the value, bulk and weight of packages, and to distances between points of shipment and points of destination.

Rates on particular packages do not, and should not, bear any definite relation to specific items of expense which the carriers may have to incur in connection with the shipment of such packages.

Both by custom and by law, express matter is classified, and a tariff of rates based on distance is applied to the classification. The theory of rate-making is that the classifications and rates must be so determined as to produce revenue sufficient to pay all expenses, including probable losses, and to pay a reasonable profit on capital. Not specific items of expense, but the aggregate expenses, constitute the prime factor in the problem of estimating the necessary revenues of carriers.

Certainly the addition of a uniform sum to every rate, as by increasing a rate from 25 cents to 26 cents, and another rate from $5.00 to $5.01, and so on throughout the whole schedule, could not be considered as a fair or reasonable method of increasing the general revenues to meet the increased general expense.

Respectfully submitted,

HARVEY L. CHRISTIE,
Of Counsel for Hamilton-Brown Shoe Co. *et al.*

No. 10

UNITED STATES SUPREME COURT

WILLIAM CRAWFORD,

Complainant-Appellant,

against

WILLIAM L. RUSSELL, as Treasurer of the Adams Express Company,

Defendant-Appellee.

PAPERS ON MOTION TO REMAND TO STATE COURT.

BILL, BRYSON & BALDWIN,

Solicitors for Complainant-Appellant,

[illegible] Street, New York.

James B. Dill,

Of Counsel.

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Supreme Court,

CITY AND COUNTY OF NEW YORK.

WILLIAM CRAWFORD, Plaintiff, AGAINST WILLIAM L. HUBBELL, as Treasurer of The Adams Express Company, Defendant.	Petition on Removal.

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

The petition of William L. Hubbell, treasurer of The Adams Express Company, the above named defendant, respectfully shows to this Honorable Court:

I.

Your petitioner, who is the defendant in the above entitled suit, was at the commencement thereof and still is a citizen and resident of the State of Connecticut; and the above named plaintiff was at the time of the commencement of the above entitled suit and still is a citizen and resident of the State of New York.

II.

This suit is a suit of a civil nature in equity, wherein the matter and amount in dispute exceeds, exclusive of interest and costs, the sum and value of five thousand dollars ($5,000), and arising under the

Constitution and laws of the United States, and particularly under an Act of Congress providing Internal Revenue, entitled "An Act to provide ways and means to meet war expenditures, and for other purposes," approved June 13, 1898, which facts appear by the complaint in said suit, a copy of which is hereto annexed, marked "Schedule A," and reference thereto is prayed as a part of this petition, as fully as if here set forth.

III.

The matter in dispute in this suit is whether the said Act of Congress, entitled "An Act to provide ways and means to meet war expenditures and for other purposes," approved June 13, 1898, imposes upon The Adams Express Company and requires it to pay the stamp tax therein provided for, of one cent upon every bill of lading or receipt issued by said express company for goods accepted by it for transportation.

The plaintiff contends that such tax is by said law imposed upon said express company; that by said law it is made the duty of said express company to affix said stamps to said bills of lading or receipts, and to pay said tax; and that said express company may not lawfully insist that the plaintiff and other shippers of express packages over its lines shall provide or pay for the stamps to be affixed to such bills of lading or receipts.

The defendant contends that such tax is not by said law imposed upon said express company, and that the said express company may lawfully insist that the plaintiff and other persons desiring to ship express packages over its lines shall provide or pay for such stamps before the said express company can lawfully be required to accept such packages for transportation; and that the said express company may lawfully demand and collect from the plaintiff and other shippers desiring to ship express packages over its lines the amount of the cost of said stamps in addition to its usual and reasonable rates, as

demanded and received by it from the plaintiff and 7
other shippers prior to July 1, 1898, when said Act of Congress so far as concerns said stamp tax took effect.

The number of express packages ordinarily shipped over the said The Adams Express Company's lines exceeds ninety thousand of such packages per day, or more than twenty-eight million of such packages per year, and if it should be decided, as the plaintiff contends, that the said stamp tax is by said law of Congress imposed upon the said express company, and that it is the duty of said express company to pay the same, the said express company would be required to pay therefor more than $900 per day, and more than $280,000 per year. The 8
matter or amount in dispute in this suit is the value of the right claimed by said The Adams Express Company to require the plaintiff and other shippers of express packages over its lines to provide or pay for said stamps, and the value of such right is more than $280,000 per year.

IV.

This suit was commenced by the service of a summons and complaint, notice of motion for injunction and affidavit on your petitioner, the defendant above named, on the eighteenth day of August, 1898. Your petitioner has duly appeared in said 9
suit, and your petitioner's time to answer or plead to the said complaint will expire on the seventh day of September, 1898, and your petitioner is not required by the laws of the State of New York, or by any rule of the State Court in which this suit is brought, to answer or plead to the said complaint. No answer, demurrer or other pleading on behalf of the defendant has yet been served in said suit. There has been no trial of this suit in this Honorable Court, and no term of this Court at which this suit could be tried has been held since the same was commenced.

10

V.

Your petitioner desires to remove this suit into the Circuit Court of the United States for the Southern District of New York, where this suit is pending, in pursuance of the Acts of Congress and the statutes of the United States in such case made and provided.

VI.

Your petitioner has made and herewith files a bond with good and sufficient surety for his entering in said Circuit Court of the United States, on the first day of its next session, a copy of the record
11 in this suit, and for paying all costs that may be awarded by said Circuit Court of the United States, if said Court shall hold that said suit was wrongfully or improperly removed or transferred thereto, and also for there appearing and entering special bail in this suit, if special bail was originally requisite therein.

VII.

Your petitioner therefore prays this Honorable Court to accept this petition and said bond, and to proceed no further herein, except to make the order of removal required by law, and to accept and approve this petition and the bond and sureties filed
12 herewith, and to cause the record in this suit to be removed into the Circuit Court of the United States for the Southern District of New York, in which District said suit is now pending.

And your petitioner, as in duty bound, will ever pray, &c.

Dated New York, August 25, 1898.

SEWARD, GUTHRIE & STEELE,
Attorneys for Petitioner,
40 Wall Street,
New York City.

STATE OF NEW YORK, }
City and County of New York, } ss.: 13

CHARLES STEELE, being duly sworn, doth depose and say: That he is a member of the firm of Seward, Guthrie & Steele, attorneys for the above named petitioner; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true. That the reason why this verification is not made by the petitioner is that the petitioner is not within the City, County or State of New York. That deponent is also Secretary of The Adams Express Company, and that the sources of deponent's 14
knowledge and information in regard to the statements contained in the foregoing petition are his familiarity with and knowledge of the affairs of said The Adams Express Company by reason of his position as Secretary thereof, and also statements made to him by the President of said The Adams Express Company, and an inspection of the various papers and records of the company in connection therewith.

CHARLES STEELE.

Sworn to before me this 25th }
day of August, 1898. }

JOHN J. DALY,
Notary Public, 15
Kings Co.
Cert. filed in N. Y. Co.

16

Schedule "A."

SUPREME COURT,

COUNTY OF NEW YORK.

WILLIAM CRAWFORD, Plaintiff, AGAINST 17 WILLIAM L. HUBBELL, as Treasurer of the ADAMS EXPRESS COMPANY, Defendant.	Notice of Motion for Injunction.

Take notice, that upon the summons in this action, and the complaint herein and the annexed affidavit of William Crawford, both verified on the 17th day of August, 1898, a motion will be made at a Special Term of this Court, Part I. thereof, in the Court House, in New York City, on the 30th day of August, 1898, at 10.30 o'clock in the forenoon, or as soon thereafter as coun-
18 sel can be heard, for an order by which the defendant and the said Adams Express Company, its agents, employees and servants, shall be enjoined, restrained and prohibited, pending the determination of this action, from refusing to accept and receive for forwarding and transportation the package tendered for forwarding and transportation mentioned in the complaint, upon the prepayment or offer to prepay the regular and established charges for such forwarding and transportation, to wit, the sum of thirty-five (35) cents.

That they, and each of them, be enjoined, restrained and prohibited, during the pendency of this

action, from refusing to accept and receive for for- 19
warding and transportation, and from refusing to forward and transport, any other package or packages of the kind and character which the said Adams Express Company is accustomed to forward and transport, and of the kind and character of which the said Adams Express Company holds itself out to the public as a common carrier, when the offer or tender of such package shall be accompanied by the prepayment or offer to prepay the regular and established charges of the said Adams Express Company for such forwarding and transportation, exclusive of the United States Revenue stamp required by the Act of Congress, approved June 13, 1898, to be affixed to the bill 20
of lading, manifest or other evidence of receipt and forwarding, and exclusive of the price, cost or value of such stamp.

That they, and each of them, be enjoined, restrained and prohibited, pending the determination of this action, from requiring of the plaintiff as a condition of forwarding or transporting any package or packages for the plaintiff, that the plaintiff directly or indirectly furnish or pay for the United States Revenue stamp required by said act to be affixed to the bill of lading, manifest or other evidence of receipt and forwarding.

That they, and each of them, be enjoined restrained and prohibited, during the pen- 21
dency of this action, from requiring of the plaintiff or any of its consignees, as a condition of the forwarding and delivery of any package that the plaintiff or such consignee directly or indirectly furnish or pay for the United States revenue stamp required by said act to be affixed to the bill of lading, manifest or other evidence of the receipt and forwarding.

That they, and each of them, during the pendency of this action, be enjoined and required to accept and receive for forwarding and transportation, and to forward and transport for the plaintiff, any pack-

22 age or packages of the kind and character they are accustomed to forward and transport, and of the kind and character of which they hold themselves out to the public as common carriers, at the regular rates established by them prior to the first day of July, 1898, and without requiring from the plaintiff that he furnish or pay for the United States revenue stamp required by said act to be affixed to the bill of lading, manifest or other evidence of the receipt and forwarding.

That they, and each of them, during the pendency of this action, be enjoined, restrained and prohibited from requiring of the plaintiff as a condition of the plaintiff's employing the
23 Adams Express Company as a common carrier that the plaintiff or its consignee directly or indirectly furnish or pay for the United States revenue stamp or stamps required by said act to be affixed to the bill of lading, manifest or other evidence of the receipt and forwarding either as a separate and distinct charge forforwarding and transportation, or by way of an increased rate for such forwarding and transportation.

That the plaintiff have such other, further or different relief as may be just, with the costs of the motion.

Dated August 17, 1898.

24 DILL, SEYMOUR & KELLOGG,
Attorneys for Plaintiff,
27 Pine Street.

To Messrs. SEWARD, GUTHRIE & STEELE,
Attorneys for Defendant,
40 Wall Street.

SUPREME COURT, 25

CITY AND COUNTY OF NEW YORK.

WILLIAM CRAWFORD, Plaintiff, AGAINST WILLIAM L. HUBBELL, as Treasurer of the ADAMS EXPRESS COMPANY, Defendant.	Affidavit for Injunction. 26

BOROUGH OF MANHATTAN, City and County of New York, } ss.:

WILLIAM CRAWFORD, being duly sworn, says: He is the plaintiff in the above entitled action; that he has read the complaint herein which is hereto annexed, and the allegations therein contained are true to the knowledge of the deponent.

That prior to the first day of July, 1898, the Adams Express Company mentioned in the complaint had fixed and established regular rates for the forwarding the transportation of packages, parcels and bundles by express, and had compiled and published a book of upwards of two hundred pages, setting forth and announcing the rates which had been fixed and established for forwarding and transporting packages, parcels and bundles to all the points reached by its system, and had furnished such books to its agents and customers, and among others had furnished one or more of the same to the plaintiff, and that the rates stated in the complaint are the rates fixed and established by the said Adams Express Company and published in said book, as appears therefrom at page 27

12, and from the Addenda thereto following page 223 which is entitled, "Graduated rates for packages weighing less than 100 lbs."

That the rates thus fixed and established by the Adams Express Company were in force for a long time prior to July 1, 1898, and were rates upon the payment of which, prior to said last mentioned date, the said Adams Express Company insisted as a condition of accepting packages, parcels and bundles for forwarding and transportation.

That upon the payment of said rates the said Adams Express Company, prior to July 1, 1898, was accustomed to call for packages, parcels and bundles at deponent's place of business, in the City of New York, receive the same, issue its own receipt therefor, and deliver the same at destination, whether in this or other States, to the consignee and take from the consignee, to itself, a receipt for the delivery thereof.

That on or about the first day of July, 1898, the said Adams Express Company issued a circular of instructions to its agents and employees, in the City of New York and throughout the country, in which the attention of such agents and employees was called to the Revenue law referred to in the complaint herein; and said agents and employees were instructed by such circular to see that each receipt, upon which a stamp is required, has the proper stamp affixed thereto and properly canceled; and they were further instructed that in every case the amount of the stamp must be collected from the parties to whom the receipt is issued, and that all rates quoted on and after July 1, 1898, must be plus the revenue tax.

That for a long time prior to the first day of July, 1898, it was and still is the custom of the plaintiff and other large retail houses in the City of New York to deliver all goods purchased from them to their respective customers if within 100 miles from the City of New York free of charge for delivery, and by reason of the rates established by the Adams

Express Company, as well as the other express com- 31
panies, having forwarding and transportation facilities in the City of New York, the said Adams Express Company was largely employed by the plaintiff and other large retail houses for the forwarding and transportation of packages, parcels and bundles to their respective customers.

That the plaintiff's business is done upon a very narrow margin of profit, and the exaction by the said Adams Express Company of the payment of said tax by the plaintiff is a serious detriment and disturbance to the plaintiff's business, and will be a serious detriment and injury to plaintiff's business during the pendency of this action, and the refusals of the said Adams Express Company set 32
forth in the complaint, and the continuance of the acts therein complained of during the pendency of the action, would produce great injury to the plaintiff and will be a great detriment and disturbance to its business, and will greatly interfere therewith, and that said injury will be continuous and the plaintiff will daily be required to either submit to the payment of the Internal Revenue Tax upon each receipt issued for forwarding and transportation by express, or to forward his packages, parcels and bundles by some other means, to his great and irreparable injury.

WILLIAM CRAWFORD.

Sworn to before me this 17th } 33
day of August, 1898. }

JOHN J. RANAGAN,
Commissioner of Deeds,
Borough of Manhattan,
City of New York.

34

SUPREME COURT

OF THE STATE OF NEW YORK.

WILLIAM CRAWFORD,
Plaintiff,

AGAINST

WILLIAM L. HUBBELL, as Treasurer of the ADAMS EXPRESS COMPANY,
35
Defendant.

The plaintiff desires the trial of this action in the County of New York.

Summons.

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

36 Dated New York, August 17, 1898.

DILL, SEYMOUR & KELLOGG,
Plaintiff's Attorneys.
Office and Post Office address,
27 Pine Street,
New York City,
N. Y.

SUPREME COURT, 37

COUNTY OF NEW YORK.

WILLIAM CRAWFORD,
Plaintiff,

AGAINST

WILLIAM L. HUBBELL, as Treasurer of the Adams Express Company,
Defendant.

Complaint. 38

The above named plaintiff, by Dill, Seymour & Kellogg, its attorneys, complaining of the defendant, respectfully shows to the Court:

I.—That at all the times hereinafter mentioned the above named plaintiff was and is a retail merchant in the City of New York, carrying on said business as the sole surviving partner of the firm of Simpson, Crawford & Simpson, and under said firm name, and plaintiff has duly complied with all the requirements of law to entitle him to do business under said firm name. 39

II.—That the said Adams Express Company at all the said times was and is an unincorporated association or joint stock company, consisting of seven or more persons, carrying on business in the City and State of New York, and elsewhere in the United States, and that the said association has and has had a president and treasurer; that the above named defendant, William L. Hubbell, is the treasurer of the said Adams Express Company.

III.—That the said Adams Express Company is now and has been for many years last past engaged in the business of transporting and forwarding express packages between points located within the State of New York and between points located within the State of New York and those located within other States of the United States and between points located within such other States, as a common carrier, and that during the said time it has continuously held itself out to the public as an inter-State and intra-State common carrier of express packages in the manner aforesaid.

IV.—That in the course of its business as such common carrier, it has entered into contracts with various railroad companies having terminals in the City of New York and elsewhere, whereby it has acquired the right to transport and forward such express packages over the lines of such railroads.

V.—That the said Adams Express Company, among its other contracts, has entered into an arrangement or contract with the New York, New Haven and Hartford Railroad Company, whereby it has acquired exclusive right to forward and transport express packages over the lines of the said railroad between New York and Danbury, Connecticut, and that the said Adams Express Company is the only company or concern engaged in the business of forwarding and transporting express packages between New York and Danbury, either over the lines of the said New York, New Haven and Hartford Railroad or over any other lines of railroad.

VI.—That the business conducted by the said Adams Express Company at the times herein mentioned was and is of a public nature, involving the use of public highways, streets and franchises, and that the said Adams Express Company was and is a common carrier, and subject to all legal responsibilities as such.

VII.—That heretofore and prior to the first day of July, 1898, the said Adams Express Company had established fixed and regular rates and charges for the forwarding and transportation of goods and chattels between New York and Danbury, and that the rate thus established and charged for packages of twenty pounds or under in weight and of a value less than $50, between New York and Danbury aforesaid, was thirty-five cents per package. That the said Adams Express Company prior to the said time had advertised and held itself out as willing and ready to forward and transport express packages of the said weight and value from New York to Danbury upon payment in advance to it by the shipper of the sum of thirty-five cents.

VIII.—That at all the times mentioned herein, and for many years last past, the above named plaintiff was and is carrying on the said business of retail merchant in the City of New York and elsewhere, with his principal office and place of business in the City, County and State of New York.

That from the nature of and in the course of his business, he is and has been, during said period, compelled to ship large quantities of goods to various parts of the United States by express, and that it has been and is of great importance to this plaintiff that such shipments should go by express and not by freight or otherwise, and that they should be promptly delivered at their places of destination under safeguard against loss such as express companies employ, and should be forwarded or transported at reasonable prices and charges. That the competition between plaintiff and his rivals in business is such that in the event of any inability to forward goods by express, as aforesaid, he would be subjected to great detriment and disadvantage and most seriously injured in his business.

That among the places to which plaintiff is frequently compelled to thus ship goods by express is Danbury, Connecticut, above mentioned, and that

46 the only express company forwarding or transporting goods between New York and said Danbury is the said Adams Express Company.

That the said plaintiff has also made very large express shipments for many years last past over the lines of the Adams Express Company to other places upon the said lines, and has likewise shipped very largely over the lines of other express companies carrying goods from New York to other localities That the average number of express shipments heretofore made by the plaintiff over all of the said express lines from the City of New York has not been less than 2,500 per month, and for the month of June, 1898, was twenty-nine hun-
47 dred and seventy-six, and that the average number of shipments heretofore made by the plaintiff over the lines of the Adams Express Company has not been less than seven hundred shipments per month, and for the month of June, 1898, was seven hundred and sixty-nine. That the plaintiff's business has been and is growing and extending, and that the aggregate number of shipments which the plaintiff will hereafter be required to make in the regular and ordinary course of its business over the lines of the said Adams Express Company and of the other express companies having terminals in New York, will not be less than the amount of shipments in the past.

48

IX. —That on the 15th day of August, 1898, the above named plaintiff, in the regular course of his business, offered and tendered to the said Adams Express Company at its office in the City of New York, a parcel of merchandise and requested the shipment, forwarding and transportation thereof to said Danbury, Connecticut, which is located on the line of the said New York, New Haven and Hartford Railroad. That the said parcel was of the kind and nature which the said Adams Express Company has heretofore held itself out and is now holding itself out as being willing and ready to transport by express

as a common carrier, was properly prepared for 49
transportation, and the same was in weight less than twenty pounds, and in value was less than $50. That the said package was duly labeled and addressed to Messrs. Quinn & Scott, at said Danbury. That the said Quinn & Scott are and for a long time past have been regular customers of the plaintiff and doing business with and making purchases from the plaintiff, and that the contents of said package was so tendered for transportation as aforesaid, pursuant to a *bona fide* order therefor received by the plaintiff from the said Quinn & Scott. That said parcel or package was in all respects as to size, contents, wrapper, address and all other particulars, in strict conformity with the rules, regulations and require- 50
ments of the said Adams Express Company. That the plaintiff at the time of said tender of the said parcel, likewise tendered in legal tender money of the United States to the said Adams Express Company, the sum of thirty-five cents for the transportation thereof, and that the sum thus tendered was the amount of the charge or rate as established by the said Adams Express Company for such transportation prior to July 1, 1898.

X.—That the said Adams Express Company refused to accept said package for shipment or transportation unless the plaintiff should pay in advance to the Adams Express Company the 51
price or value of the stamp required by the Act of Congress approved June 13, 1898, and entitled "An Act to Provide Ways and Means to Meet War Expenditures, and for other Purposes," or furnish such stamp to be attached and canceled to the bill of lading, manifest, or other evidence of receipt or forwarding required by said act, to be issued by all express companies and common carriers to shippers or consignors.

Said Adams Express Company has stated to the plaintiff that it has raised and increased its rates as the same existed prior to July 1, 1898, for the for-

52 warding or transportation of such packages by adding thereto the amount or value of the said internal revenue stamp required by law to be placed upon such bill of lading or receipt, for the purpose of reimbursing itself for the amount of such tax imposed by said act.

That upon the tender of the package for forwarding and transportation as aforesaid said Adams Express Company then and there refused to accept said package for forwarding or transportation unless the plaintiff should himself before the issue by the said Adams Express Company of any bill of lading or receipt therefor, attach to said bill of lading or receipt the stamp required by said act, or should
53 pay in advance to the Adams Express Company the price or value of the stamp to be affixed thereto by said company.

XI.—That the said Adams Express Company has further stated to plaintiff that it would accept no parcels, packages, bundles, boxes or bales for transportation by express to said Danbury or to any other point upon its lines, unless the shipper or consignor paid to it the price or value of the said stamp required to be attached and canceled to the said bill of lading or furnished the same, in addition to the amount of its rates as established prior to July 1, 1898, and has
54 stated that it had raised or increased its rates for forwarding and transportation to all points reached by its system, by adding to all such rates as established prior to July 1, 1898, the price or value of the said revenue stamp, and that in the future they would not accept for shipment, forwarding or transportation from any shipper or consignor, any bundle, bale, package or parcel or article unless such shipper or consignor paid them the price or value of the said stamp in addition to the said rate established prior to July first, 1898.

XII.—That thereupon the plaintiff refused to pay 55
the amount of the said stamp, and demanded of the said Adams Express Company that they accept the said package for transportation upon receipt of the rate tendered by the plaintiff, and inquired of the said Adams Express Company whether it had any other ground for its refusal to accept said package other than the non-payment of the said tax. That the said Adams Express Company still persisted in its refusal to accept said package for transportation, and stated that it had no other reason for its refusal than the refusal of the plaintiff to pay the amount of the said tax.

That the said plaintiff was unable to compel the said Adams Express Company to receive the said 56
package, and that the same was not accepted or received by it.

XIII.—That the said Adams Express Company as above stated is the only company or concern carrying on the business of a common carrier of express packages between New York and said Danbury, and that by reason of the foregoing refusal and action it became impossible for the plaintiff to send the said package by express to said Quinn & Scott.

XIV.—That the action taken by the Adams Express Company with regard to the requiring the shipper or consignor to pay the amount of the said tax has 57
been also taken by the American Express Company, the United States Express Company, the Wells-Fargo Express Company and by all or nearly all of the express companies having terminals in the City of New York, and that all of the said express companies have refused and are refusing to accept for transportation any bundles, bales, packages, parcels or things, except upon the condition that the shipper or consignor furnish and pay to such express companies the amount or value of the said war revenue stamp, in addition to the rates or charges for

transportation as established by such express companies prior to July 1, 1898.

That by reason of said action on the part of all the said express companies, all or nearly all of the shippers of express packages in the City of New York, and a very large number in other parts of the United States, are prevented from shipping goods by express, except upon the payment of the tax aforesaid.

XV.—Upon information and belief, that the said action on the part of the said Adams Express Company and the other express companies, in compelling the plaintiff and other shippers to pay the amount of the said tax, is unreasonable and unlawful and in violation of the statutes of the United States in such cases made and provided.

XVI.—That by reason of the very large number of packages which plaintiff is required, in the ordinary course of its business to ship by express the plaintiff will be subjected, unless relief is afforded by this Court, to the necessity of bringing a very large number of suits for the recovery from time to time of such moneys as he may pay under protest, pursuant to the imposition of the said tax, and that the said necessity will result in a multiplicity of suits which would be disastrous in the highest degree to the plaintiff's rights, and would cause an excessive and inordinate expense, and would interfere most seriously with plaintiff's business and occupation, for all of which no adequate remedy would exist at law.

That by reason of the action of the Adams Express Company, as above stated, the said plaintiff will be hindered and delayed in the transportation of its goods by express, and its business and occupation will be otherwise interfered with, largely to its damage, and that the exact amount of such damage is wholly incapable of accurate compensation,

and that the plaintiff will have no adequate remedy 61
therefor at law.

XVII.—That in the determination of the said question, not only the rights of the plaintiff, but of all other shippers of express packages in the City and State of New York and throughout the entire United States of America are likewise involved, and that the interests of the said shippers with regard to the foregoing are identical with those of the plaintiff, and that to enforce said interests, unless relief be granted and the matter disposed of by injunction, a great multiplicity of suits will be required, to the excessive damage of such shippers and consignors, and for which no adequate remedy will otherwise 62
exist.

WHEREFORE, the plaintiff demands judgment against the defendant and against the Adams Express Company, its agents, employees and servants, that they and each of them be enjoined, restrained and prohibited from refusing to accept and receive for forwarding and transportation the said package tendered for forwarding and transportation, as set forth in the complaint upon the prepayment or offer to prepay the regular aad established charges of such forwarding and transportation, to wit, the sum of thirty-five cents.

That they and each of them be enjoined, restrained 63
and prohibited from refusing to accept and receive for forwarding and transportation and from refusing to forward and transport any other package or packages of the kind and character which the said Adams Express Company is accustomed to forward and transport, and of the kind and charafter of which the said Adams Express Company holds itself out to the public as a common carrier, when the offer or tender of such package shall be accompanied by the prepayment or offer to prepay the regular and established charges of the said Adams Express Company for such forwarding and

64 transportation, exclusive of the United States revenue stamp required by said Act of Congress approved June 13, 1898, to be affixed to the bill of lading, manifest or other evidence of receipt and forwarding, and exclusive of the price, cost or value of such stamp.

That they and each of them be enjoined, restrained and prohibited from requiring of the plaintiff as a condition of forwarding and transporting a package or packages for the plaintiff that the plaintiff directly or indirectly furnish or pay for the United States revenue stamp required by said act to be affixed to the bill of lading, manifest or other evidence of receipt and forwarding.

65 That they and each of them be enjoined, restrained and prohibited from requiring of the plaintiff or any of its consignees as a condition of the forwarding and transportation and delivery of any package that the plaintiff or such consignee directly or indirectly furnish or pay for the United States revenue stamp required by such act to be affixed to the bill of lading, manifest or other evidence of receipt and forwarding.

That they and each of them be enjoined and required to accept and receive for forwarding and transportation and to forward and transport for the plaintiff any package or packages of the kind and character they are accustomed to forward and

66 transport and of the kind and character of which they hold themselves out to the public as custom carriers, at the regular rates established by them prior to the first day of July, 1898, and without requiring from the plaintiff that he furnish or pay for the United States revenue stamp required by said act to be affixed to the bill of lading, manifest or other evidence of receipt and forwarding.

That they and each of them be enjoined, restrained and prohibited from requiring of the plaintiff as a condition of the plaintiff's employing the Adams Express Company as a common carrier that the plaintiff or its consignees, directly or indirectly, furnish or

pay for the United States revenue stamp or stamps 67
required by said act to be affixed to the bill of ladings, manifest or other evidence of receipt and forwarding, either as a separate and distinct charge for forwarding and transportation or by way of an increased rate for such forwarding and transportation.

That pending the determination of this action a temporary order and injunction to the effect aforesaid be issued.

That plaintiff have such further other order or relief as may be equitable and just.

That the plaintiff recover from the defendant the costs and disbursements of this action.

DILL, SEYMOUR & KELLOGG,
Plaintiff's Attorneys, 68
27 Pine Street,
New York City.

BOROUGH OF MANHATTAN,
City and County of New York, } ss.:

WILLIAM CRAWFORD, being duly sworn, says.: That he is the plaintiff in the above entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

WILLIAM CRAWFORD.

Sworn to before me this 17th } 69
day of August, 1898. }

JOHN J. RANAGAN,
Commissioner of Deeds,
Borough of Manhattan,
City of New York.

(Endorsed)—Supreme Court, New York County.—William Crawford, Plaintiff, against William L. Hubbell, Treasurer of the Adams Express Company, Defendant.—Notice of Motion for Injunction, Affidavit, Summons and Complaint.—Dill, Seymour & Kellogg, Attorneys for Plaintiff, 27 Pine Street, New York.

70 **Bond on removal.**

KNOW ALL MEN BY THESE PRESENTS:

That we, WILLIAM L. HUBBELL, of the City of Bridgeport, County of Fairfield and State of Connecticut, sued as treasurer of The Adams Express Company as principal, and THE AMERICAN SURETY COMPANY OF NEW YORK, having an office and principal place of business at No. 100 Broadway, in the City of New York, as surety, are held and firmly bound unto WILLIAM CRAWFORD in the penal sum of five hundred dollars ($500) lawful money of the United States of America, for the payment whereof
71 well and truly to be made unto said William Crawford, we bind ourselves, and our and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

YET UPON THESE CONDITIONS,

The said William L. Hubbell, sued as treasurer of The Adams Express Company, having petitioned the Supreme Court of the State of New York in and for the County of New York for the removal of a certain suit therein pending wherein the said William Crawford is plaintiff and the said William L. Hubbell, as treasurer of The Adams Express Company, is defendant, into the Circuit Court of the United
72 States for the Southern District of New York,

NOW, THEREFORE, if the said William L. Hubbell, treasurer of The Adams Express Company, shall enter in the said Circuit Court of the United States for the Southern District of New York on the first day of its next session, a copy of the record in such suit, and pay all the costs that may be awarded by the said Circuit Court of the United States, if said Circuit Court shall hold that said suit was wrongfully or improperly removed thereto, and shall also appear in said Circuit Court and enter special bail in such suit, if special bail was originally required

therein, then this obligation to be void; otherwise to 73
remain in full force and virtue.

WITNESS our hands and seals this 24th day of August, A. D. 1898.

WILLIAM L. HUBELL, [SEAL.]
By SEWARD, GUTHRIE & STEELE,
Attys. in fact,

AMERICAN SURETY COMPANY OF NEW YORK,
By H. D. LYMAN,
Vice-President.
W. S. MACKELLAR,
[SEAL.] Assistant Secretary.

STATE OF NEW YORK, } ss.: 74
County of New York, }

On this 25th day of August, 1898, before me personally appeared Charles Steele, to me personally known and known to me to be a member of the firm of Seward, Guthrie & Steele, and who executed the foregoing bond on behalf of William L. Hubbell, as his attorney in fact, and he acknowledged to me that he executed the same.

JOHN J. DALY,
Notary Public,
Kings County.

Cert. filed in N. Y. Co.

State, City and County of New York, ss.: 75

On this 24th day of August, 1898, before me personally appeared H. D. Lyman, Vice-President of the American Surety Company of New York, to me known, who being by me duly sworn, did depose and say, that he resided in the City of New York; that he is the Vice-President of the American Surety Company of New York, the corporation described in and which executed the above instrument; that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by

76 order of the board of directors of said corporation, and that he signed his name in the manner provided by law. And the said H. D. Lyman further said that he was acquainted with Mackellar and knew him to be the assistant secretary of said corporation; that the signature of said W. S. Mackellar subscribed to the said instrument is in the genuine handwriting of the said W. S. Mackellar, and was thereto subscribed by the like order of the said board of directors, and in the presence of him the said H. D. Lyman, vice-president.

W. H. BISHOP,
Notary Public,
New York County.

77

At a regular quarterly meeting of the Board of Directors of the American Surety Company of New York, held on the 12th day of April, 1893, the following resolution was adopted:

"Resolved, That the president and vice-presidents be and they hereby are, and each one of them is authorized and empowered to execute and deliver, and attach the seal of the company to any and all bonds and undertakings for, or on behalf of the company, in its business of guaranteeing the performance of contracts other than insurance policies, and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings by
78 law allowed; such guarantee, bonds and undertakings, however, to be attested in every instance by the secretary, one of the assistant secretaries, or one of the attorneys."

City and County of New York, ss.:

I, W. S. MACKELLAR, Assistant Secretary of the American Surety Company of New York, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and

true transcript therefrom, and of the whole of said 79
original resolution.

Given under my hand and the seal of the company, at the City of New York, this 24th day of Aug., 1898.

W. S MACKELLAR,
Assistant Secretary.

(Endorsed)—Supreme Court, City and County of New York.—William Crawford against William L. Hubbell, as Treasurer of Adams Express Company.—Bond on Removal.—Seward, Guthrie & Steele, Attorneys for Defendant, 40 Wall Street, New York.

80

NEW YORK SUPREME COURT,

COUNTY OF NEW YORK,

WILLIAM CRAWFORD, Plaintiff, AGAINST WILLIAM L. HUBBELL, as Treasurer of Adams Express Company, Defendant.	Notice of Appearance and Demand. 81

Please take notice, that the defendant William L. Hubbell, as Treasurer of Adams Express Company, appears in this action, and that we are retained by, and appear as attorneys for, the said defendant in this action, and demand that a copy of the complaint

82 and all other papers in this action, be served on us at our office, No. 40 Wall Street, New York City.

Dated New York City, August 18, 1898.

Yours, &c.,

SEWARD, GUTHRIE & STEELE,
Attorneys for said Defendant.
Office and Post Office address,
No. 40 Wall Street,
New York City, N. Y.

To DILL, SEYMOUR & KELLOGG, Esqs.,
Attorneys for Plaintiff.

83 (Endorsed)—Supreme Court, New York County.—William Crawford, against William L. Hubbell, as Treasurer of the Adams Express Company.—Notice of Appearance and Demand.—Seward, Guthrie & Steele, Attorneys for Defendant, 40 Wall Street, New York.—Copy received, August 22, 1898, Dill, Seymour & Kellogg, Attorneys for Plaintiff, 27 Pine Street, New York.

CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

84

WILLIAM CRAWFORD,
Plaintiff,

AGAINST

WILLIAM L. HUBBELL, as Treasurer of The Adams Express Company,
Defendant.

Notice of Removal.

Dear Sirs,—You are hereby notified that the above entitled action has been duly removed from

the Supreme Court of the State of New York to the Circuit Court of the United States for the Southern District of New York, and that a certified transcript of the record therein has been this day filed in the office of the Clerk of the Circuit Court of the United States for the Southern District of New York. 85

Dated New York, August 26, 1898.

Yours, &c.,

SEWARD, GUTHRIE & STEELE,
Attorneys for Defendant.

To Messrs. DILL, SEYMOUR & KELLOGG,
Attorneys for Plaintiff,
27 Pine Street,
New York City.

(Endorsed)—U. S. Circuit Court, Southern District of New York.—William Crawford against William L. Hubbell as Treasurer of Adams Express Company.—Notice of Removal.—Seward, Guthrie & Steele, Solicitors for defendant, 40 Wall Street, New York.—Copy received Aug. 29, '98. —Dill, Seymour & Kellogg. 86

CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

WILLIAM CRAWFORD, Plaintiff, AGAINST WILLIAM L. HUBBELL, as Treasurer of the Adams Express Company, Defendant.	Notice of Motion to Remand.

87

Take notice, that upon the petition of William L. Hubbell, treasurer of the Adams Express Company,

88 the above named defendant, for the removal of this cause from the State to the Federal Court, dated August 25, 1898, and upon the order or removal granted thereon, and upon the summons and complaint herein and the affidavit of William Crawford, verified the 17th day of August, 1898, annexed thereto, and upon all the papers and proceedings herein, an application will be made to this Court, at the opening thereof, on the 7th day of September, 1898, in the Federal Building, in the Borough of Manhattan, City of New York, for an order remanding this case to the Supreme Court of the State of New York and directing that no further proceedings herein be had in the Circuit Court of the United
89 States, upon the ground, among others, that the said Circuit Court of the United States is without jurisdiction to hear and determine the case and the same was improperly removed thereto.

And the plaintiff will ask for such other order and relief as may be just, with costs.

Dated September 2, 1898.

DILL, SEYMOUR & KELLOGG,
Attorneys for Plaintiff,
27 Pine St.,
New York City.

To Messrs. SEWARD, GUTHRIE & STEELE,
Attorneys for Defendant,
90 40 Wall St.,
New York City.

U. S. CIRCUIT COURT, 91

SOUTHERN DISTRICT OF NEW YORK.

WILLIAM CRAWFORD

AGAINST

WILLIAM L. HUBBELL, as Treasurer of Adams Express Company.

92

Motion to Remand.

LACOMBE, *Circuit Judge:*

An analysis of the bill of complaint shows conclusively that the real controversy tendered is whether or not the terms of the recent War Revenue Act require express companies to pay for the stamps to be affixed to the receipts they give and forbid their exacting the price of such stamps from their customers, or whether such Act leaves the question "Who shall pay for the revenue stamp?" open between the parties. Manifestly, then, this is a cause "arising under (a) law providing internal revenue" 93
(Sec. 629, U. S. Rev. Stat.). It has been held in this Court that the application of the section last quoted has not been modified as to removed causes by the Acts of 1887 and 1888 (Vinal *v.* Continental Construction Co., 34 F. R., 288).

Motion denied.

(Endorsed)—Crawford *v.* Hubbell, etc.—U. S. Circuit Court.—Filed September 13, 1898.—John A. Shields, Clerk.

94 **Order denying motion to remand.**

At a Stated Term of the Circuit Court of the United States for the Southern District of New York, held at the United States Court House and Post Office Building, in the County of New York, on the 24th day of September, 1898.

Present—Hon. E. HENRY LACOMBE,
Circuit Judge.

95 WILLIAM CRAWFORD

vs.

WILLIAM L. HUBBELL, as Treasurer of the Adams Express Company.

This cause coming on to be heard on the 7th day of September, 1898, upon the motion of the plaintiff to remand this cause to the Supreme Court of the State of New York, County of New York, and after hearing Frederick Seymour, Esq., of counsel for plaintiff, in support of said motion, and Charles
96 Steele, Esq., of counsel for the defendant, in opposition thereto, and the same having been duly considered by the Court, it is

On motion of Seward, Guthrie & Steele, solicitors for the defendant,

Ordered, that the said motion to remand this cause to the Supreme Court of the State of New York be and the same is hereby denied.

Enter.

E. HENRY LACOMBE,
United States Circuit Judge.

SUPREME COURT OF THE UNITED STATES. 97

WILLIAM CRAWFORD,
Plaintiff and Appellant,

AGAINST

WILLIAM L. HUBBELL, as Treasurer of the Adams Express Company,
Defendant and Appellee.

Term No. 248.

98

It is hereby stipulated and agreed that the foregoing record contains in itself and not by reference, the petition on removal, notice of motion for injunction, affidavit for injunction, summons, complaint, bond on removal, notice of appearance, notice of removal, notice of motion to remand, opinion of Mr. Justice Lacombe denying motion to remand, and order denying motion to remand, being all the papers read before the Court on the argument of the motion to remand.

Dated New York, November 10, 1899.

Dill Seymour & Baldwin
99
Attorneys for Plaintiff and Appellant,
27 Pine Street,
New York City.

Seward Guthrie & Steele,
Attorneys for Defendant and Appellee.

No. 248. (by Cour

Case No. 17,465 Wells Fargo

Brf. of Alexander for

Supreme Court of the United States.

Filed Oct. 27 1899

TERM NO. 248.

OCTOBER TERM, 1899.

Supreme Court U. S.
FILED
OCT 27 1899
JAMES H. McKENNEY,
Clerk.

WILLIAM CRAWFORD,
Appellant,

against

WILLIAM L. HUBBELL, as Treasurer of The Adams Express Company,
Appellee.

Brief in Behalf of Wells, Fargo & Company.

PRESENTED BY LEAVE OF THE COURT.

CHARLES B. ALEXANDER,
Of Counsel.

C. G. Burgoyne, Walker and Centre Streets, N. Y.

Case No. 17,345.

Supreme Court of the United States.

TERM No. 248.

OCTOBER TERM, 1899.

WILLIAM CRAWFORD,
Appellant,

AGAINST

WILLIAM L. HUBBELL, as Treasurer of The Adams Express Company,
Appellee.

BRIEF PRESENTED BY LEAVE OF THE COURT IN BEHALF OF WELLS, FARGO & COMPANY.

Statement.

This is a suit brought for the purpose of enjoining the Adams Express Company, of which the appellee is treasurer, from requiring shippers dealing with it to pay for or furnish to the company the revenue stamp which the War Revenue Act of 1898 requires to be

attached to the receipts, manifests and bills of lading issued by the carrier to the shipper, on receipt of goods for carriage and transportation.

Complainant's bill was dismissed by the Circuit Court for the Southern District of New York. An appeal having been taken to the Circuit Court of Appeals for the Second Circuit, the case comes to this tribunal upon the certificate of the Judges of that Court.

Appellant sues on behalf of a large number of merchants and shippers for the purpose of obtaining a construction of that section of the act which lays this stamp tax. He seeks not only to force the express carriers to pay the whole amount of the tax in question, but also to prevent any corresponding increase in their tariff of transportation rates, by which means they might seek to cover the enormously increased cost of operation which such a tax would thrust upon them.

Appellant contends that Congress intended to tax the business of carrying goods for hire, and to lay the tax in such a way as would prevent or prohibit the carriers from shifting any portion of the tax upon the the shippers. He claims that the act declares—expressly or by necessary implication—*(a)* that the carrier must pay the tax, and *(b)*, admitting that the payment of it will diminish the margin of profit, yet that the express companies should not be allowed to increase their reasonable charges for transportation in any degree by reason thereof. This he insists on, even if, without such a revision of his rates, he cannot obtain a fair return for the capital and industry he invests in his business, or adequate compensation in proportion to the extraordinary duties and liabilities, to which he is held by statute and common law. It is contended that Congress has thus singled out this particular occupation as the object of an extraordinary and wholly unprecedented exaction. This cannot fairly be called a tax, if appellant's views are correct because, as he gravely asserts at page 32 of

his brief in the Circuit Court of Appeals, "the carrying business of the country is in the hands of gigantic corporations and associations, enjoying public franchises of the greatest value, earning annual profits of immense amounts," etc., etc., and he believes that Congress thought that they should be forced to disgorge for the benefit of the government "out of the immense wealth which they have accumulated under the nation's protection."

Wells, Fargo & Company, which presents this brief by permission of the Court, is not only interested as a common carrier and as one of the largest express companies in the country, but as one of that class (being a corporation) against which, if the assertion of appellant is to be believed, the animus of the Legislative Power has been chiefly directed. The appellee is not a corporation, but a joint stock association with the elements of a limited partnership. It may be urged that there is some difference between the position of a corporation and an unincorporated body of carriers, and if this claim is made it should be answered by the representative of a corporation.

It is desired by Wells, Fargo & Company to submit and argue in brief certain propositions upon the subject of the case in hand.

I. It is not the policy of the Government to lay greater burdens upon corporations and their stockholders than upon other individuals. A construction of the statute which will avoid this result will be adopted.

II. The intention of the act is to tax the transaction of shipment; not the business of carriage.

III. The act provides that either party may pay the tax.

IV. Even if the tax had been expressly laid upon

the carrier, he had a right to increase his charges sufficiently to cover it.

V. It is not to be presumed that Congress intended to lay an unusual and heavy and disproportionate burden upon a special occupation or class of persons, and, if the statute be ambiguous, that construction will be adopted which is most just and reasonable and which will avoid this conclusion.

Point I.

It is not the policy of the Government to lay greater burdens upon corporations and their stockholders than upon other individuals. A construction of the statute which will avoid this result will be adopted.

The attitude of appellant appears to be that the intention of Congress, in the freight and express clause of the War Revenue Act, was to inflict a penalty on common carriers, and, in particular, corporations engaged in the express business.

Wells, Fargo & Company was incorporated in 1866 by the State of Colorado. Its capital stock, of a par value of $8,000,000, is held by some 2,100 shareholders distributed from Maine to California. The average single holding of stock in the company is only thirty-eight shares. The company gives employment to about 6,400 persons. It has for some years paid an annual dividend of six per cent. on its stock.

While the above facts are not pleaded, yet, if the Court recognizes the claim of appellant that there are rich corporations, it may equally consider these facts.

It is clear that any burden placed upon this corpo-

ration is not, as appellant seems to assume, borne by a bloated and greedy artifical entity, but by some 8,500 persons in all sorts and conditions of worldly circumstance. Congress must, therefore, according to appellant, be assumed to have been desirous of afflicting these and similar persons by this legislation. Such construction of the Act will reach the employee, as well as cut down the profits of the stockholder, for certainly no employer could maintain his present standard of wages after the Government had placed upon his business a tax amounting to a very heavy annual burden, and had forbidden any shifting of it to customers and patrons.

The intention which appellant would attribute to Congress is wholly contrary to the spirit of our Government and laws and any just view of public policy.

Any and every presumption, under forced construction, against corporations as such, works violence mediately to the property interests of individuals. That this is fact must be self-evident, and is so stated by Judge FIELD in the case of San Mateo County vs. Southern Pacific Railway Co., 13 Fed. Rep., 722:

"To deprive the corporation of its property, or to burden it, is, in fact, to deprive the corporators of their property or to lessen its value. Their interest, undivided though it be, and constituting only a right during the continuance of the corporation to participate in its dividends, and on its dissolution to receive a proportionate share of its assets, has an appreciable value, and is property in a commercial sense, and whatever affects the property of the corporation necessarily affects the commercial value of their interests."

And in the same case, and to the same effect, run the remarks of Judge SAWYER:

"The property of the corporation is in reality the property of its individual corporators. A state statute depriving a corporation of its property does deprive

the individual corporators of their property. These clauses of the Fifth and Fourteenth Amendments, and the similar clauses of the State Constitution, apply, therefore, to private corporations, not alone because such corporations are 'persons,' within the meaning of that word, but also because statutes violating their provisions, in dealing with corporations, must necessarily infringe upon the rights of natural persons. In applying and enforcing these constitutional guaranties, corporations cannot be separated from the natural persons who compose them."

Corporations are not the object of reprobation by the people of the United States. They have been created by the people themselves. Their chartered rights are given them by Congress or by the States.

If there be indulged the presumption that, whenever an act is passed in anywise touching corporate industries and enterprises, such act was, in fact, intended as penalty, it will disturb the normal adjustments of our social fabric, and derange the complicated machinery of the industries upon which each one of us daily and hourly depends. Indulgence in such presumption not only denies justice and equality under the law, but is against public policy, because inimical to business prosperity, tending to suppression by means of oppression. But, in the words of an eminent publicist and economist, recently quoted by a distinguished Senator of our Government, "Are all corporations to be suppressed? If so, the proposition is very simple. Of course, this can be done if the people want it, but it would stop every railroad, trolley, cable and horse-car system in the country and close 90 per cent. of the manufacturing and business concerns. In fact, nearly all businesses larger than the peanut stand would have to be dissolved and redistributed into small efforts, about the equivalent of what existed in the walled towns in the thirteenth century. It would, in fact, wipe out about all the economic effectiveness the last five centuries of industrial evolution have produced.

A war on corporations without some definite economic basis of discrimination, then, is simply a war on business success."

We submit, however, that, under principles of right, justice and policy, such untoward presumption may not obtain. Corporations, equally with natural persons, are within the protection and pale of the law, and a statute will not be given construction which will discriminate against them.

Crafford vs. Board of Supervisors, 87 Va., 110.
People vs. Barker, 140 N. Y., 437.

And the Fourteenth Amendment to the Constitution of the United States (Section 1), providing that "no state shall * * * deny to any person within its jurisdiction the equal protection of the laws," has been repeatedly held to include corporations as persons within its meaning.

Santa Clara County vs. So. Pacific Co., 118 U. S., 394.
Pembina Co. vs. Pennsylvania, 125 U. S., 181.
Missouri Co. vs. Mackey, 127 U. S., 205.
Home Ins. Co. vs. New York, 134 U. S., 594, 605.
Charlotte Railroad Co. vs. Gibbes, 142 U. S., 386, 391.
Gulf Co. vs. Ellis, 165 U. S., 150, 154.
Smyth vs. Ames, 169 U. S., 466.

And, in commenting on the provisions contained in the Fifth Amendment to the Constitution of the United States, Judge FIELD, in the case of San Mateo County vs. Southern Pacific Railway Co., 13 Fed. Rep., 722, says: "From the nature of the prohibitions in this amendment it would seem, with the exception of the last one, as though they could apply only to natural persons. * * * But such has not been the construction of the courts. A similar provision is found in nearly all of the state constitutions; and

everywhere, and at all times, and in all courts, it has been held, either by tacit assent or express adjudication, to extend, so far as their property is concerned, to corporations. And this has been because the property of a corporation is in fact the property of the corporators."

Upon the discovery of steam and machinery, aggregations of persons and capital became a necessity, and, after much opposition, a fact. To-day the people of the various States recognize the benefits of such aggregations, as appears by amendments to the majority of our State Constitutions granting privileges and benefits of corporate organization equally to all, such legislation being undoubtedly declarative of public policy.

Congress must have had in mind that the day has gone by when the needs of the people can be supplied by individuals acting independently and without the union of their financial means and of their labors. That the time when freight or passengers could be dragged by small individual carriers over the common highway for short distances at varying cost has forever passed. That the magnitude of the trade and travel of the American people has for sixty years required industrial enterprises which no single fortune could or would undertake, and from these necessities have grown, not by force of law, not by persuasion or fraud, but from the exigencies of the situation, these aggregations or unions of assets or means, by which all great enterprises are at present conducted.

It is hardly fair to assume that in this indirect and peculiar way Congress has sought to clip their wings.

Appellant seeks to justify the effort to mulct the express companies, by the statement that the profits of these companies have been obtained "by the exercise of quasi public franchises and privileges" and the enjoyment of "public franchises of the greatest value." He says, at page 31 of his brief in the Circuit Court of Appeals: "The business here involved is a quasi

public business conducted by corporations and other organizations which are quasi corporate in their character, operating under privileges and franchises from the sovereign."

Express companies are not, like railways, quasi public corporations, nor are they given the power of eminent domain, nor erected into monopolies, nor granted any other exclusive or remarkable privileges, nor do they exercise any franchise by reason of their occupation, nor indeed any franchises, except, in case they are incorporated, such as are conferred by the sovereign upon all business corporations. The franchise of Wells, Fargo & Company, for example, was conferred upon it by the State of Colorado, by an act of which it was incorporated, and by whose sovereignty it is visited and taxed. Neither that charter nor any of the other express company charters give any wonderful or special grant of powers.

The carrier's employment, it is true, is in a sense a public one, as is that of an innkeeper, in that he cannot refuse his service to any and is bound to carry for all at a reasonable rate. But it appears that, far from enjoying franchises and privileges, express companies have extraordinary burdens, duties and liabilities placed upon them by the State. They are held to a very high degree of care; they are liable as insurers; the amount of their charges is limited by the law. But if it is because these are the incidents of the carrier's occupation that appellant claims Congress meant to lay a tax upon his business, it is apparent appellant is asserting he should be taxed because he bears burdens and not because he exercises privileges.

The statute is not to be read in the lurid light which appellant seeks to cast upon it, but by the ordinary and clear meaning of its provisions and with the aid of the usual and familiar rules of construction. It is not the resolution of a socialistic club, but the deliberate act of the Legislature of the country, enacted in a time of great public necessity for the purpose of furnishing

as large a revenue as possible for the needs of government.

If a common carrier, performing *quasi* public duties, serving the public with great fidelity and to the great convenience of the people, and tied down by law to reasonable charges and prompt performance, as well as insurance of the safety of property entrusted to it, finds itself subjected (and its officials and employees as well) to a new set of duties, under severe penalties for omissions, neglect, evasion or violation, is it not justified in asserting that it shall be subject to no other duties or services than those *expressly* cast upon it?

POINT II.

The tax is laid upon the transaction of shipment, not upon the business of carriage.

The tax is a stamp tax, and the clause providing for it is found in the midst of a schedule of similar clauses, which unquestionably lay taxes upon transactions and not upon occupations. The act makes it the duty, of the carrier, under heavy penalty, to issue a written evidence of receipt and forwarding for each shipment. "And there shall be duly attached and canceled, as is in this Act provided, to each of said bills of lading, manifests, or other memorandum, and to each duplicate thereof, a stamp of the value of one cent." This is plainly a tax upon the transaction of shipment. It hits every such transaction. First designating an instrument to evidence the transaction—for as such the bill of lading has been regarded by this Court, viz., "an instrument of twofold character * * * at once a receipt and a contract, * * *

an acknowledgment of the receipt of property," and "a contract to carry safely and deliver" (Pollard vs. Vinton, 105 U. S., 7)—the act then destroys its evidentiary value unless stamped. It is hard to conceive of any other method so apt, simple and sure, by means of which the transaction itself could be reached. The obvious purpose of this section, so like the provisions for stamping certificates, deeds and negotiable paper, is to raise revenue by tax upon one of the most ordinary and everyday transactions of commerce.

On the other hand, were the tax designed to reach the business of the carrier, it is unequally and clumsily laid, and is to be collected in a manner involving great expense of unnecessary time and labor. The obvious and simple way to have laid such a tax would have been upon the profits or capital stock or extent of route of the carrier; or to tax the gross receipts of the business of carriage, as Congress did in the Act of 1863; or even as in Schedule A of this Act provided in case of telephone messages. The printing, selling, attaching and canceling of stamps and the necessity of stamping to entitle the paper to be used in evidence, would have been avoided as unnecessary and cumbersome. And it would certainly have been provided in precise terms in the act, that the party whose business was to be assessed was the party to pay the tax. Our legislators do not hesitate when they mean a thing to say it, especially when it relates to the payment of a tax.

No peculiar or unusual rules are to be employed for the construction of the act. The meaning of the words is plain and the character of the other stamp taxes, provided for in the same schedule of the statute, throws added light upon the clause, if any were needed.

"It is not permitted to interpret what has no need of interpretation. When an act is conceived in clear and precise terms, when the sense is manifest and leads to nothing absurd, there can be no reason to refuse the sense which naturally presents. To go elsewhere in

search of conjectures in order to restrain or extinguish it, is to endeavor to elude it."

Vattel, B. 2, c. 17, s. 263. Quoted with approval by Chancellor KENT in Jackson vs. Lewis, 17 Johns., 475, 477.

Further than this, the construction contended for by appellant involves unnecessary inconvenience.

MARSHALL, C. J., in U. S. vs. Fisher, 2 Cranch, 358, 386.
Coke, Litt., 66a, 97a.
Austin vs. Bunyard, 6 B. & S., 687; 118 E. C. L., 685.

POINT III.

The act provides that either party may pay the tax.

Harmonizing with the conclusion that the transaction of shipment, and not the business of carriage, was intended as the source of revenue, we submit that the language of the Act, in Schedule A contained, neither expressly nor impliedly designates the party whose duty it shall be to pay the tax in question, but leaves its adjustment to the parties themselves.

The one and only duty therein expressly imposed upon the carrier is, "to issue to the shipper or consignor, or his agent, or person from whom any goods are accepted for transportation, a bill of lading, manifest, or other evidence of receipt and forwarding for each shipment received for carriage and transportation," and any failure to issue such evidences of receipt and forwarding subjects the carrier to a penalty of fifty dollars for each offense. The manifest intention of Congress, in not relying upon customary issuance of evidences of receipt

and transportation, but making them a *sine qua non* to the transaction of shipment, was, primarily, to provide a tangible foundation for revenue purposes. This accomplished, a second duty was then imposed, in language absolutely impersonal, viz., "*there shall be* duly attached and canceled, as is in this act provided, to each of said bills of lading, manifests, or other memorandum, and to each duplicate thereof, a stamp of the value of one cent." (Italics are our own.) Had it been the intention of Congress to impose this second duty upon the carrier, it would have employed language as clearly and unmistakably personal as in its expression and declaration of the first duty, or, at least, continuity of sentence structure. Again, it is to be noted that, for any failure to issue evidences of receipt and forwarding upon goods accepted for transportation, the carrier alone must suffer the penalty; for failure, however, to stamp such evidences when issued, the act imposes, in addition to the penalty by way of fine, a *quasi* penalty in the destruction of any and all evidentiary value of such unstamped bills of lading, decidedly more detrimental to the shipper than to the carrier, because, as was said by this Court in Friedlander vs. Texas and Pacific Railway Company, 130 U. S., 416, "they are symbols of ownership of the goods they cover," and "of the right to receive such property at the place of delivery."

Further, and in support of our contention that the act does not indicate, directly or indirectly, the one or the other party to the transaction as primarily liable to the payment of this tax, we point to Section 6 of the act, wherein the duty of payment is unmistakably imposed in the alternative:

"That, on and after the first day of July, eighteen hundred and ninety-eight, there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this Act, or

for, or in respect of, the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, shall be written or printed by any person or persons, or party *who shall make, sign, or issue* the same, or *for whose use or benefit* the same shall be made, signed, or issued, the several taxes or sums of money set down in figures against the same, respectively, or otherwise specified or set forth in the said schedule." (Italics are our own.)

The language of the act is, we submit, as clear and definite as it could conceivably be made. The tax is to be paid by the party who makes, signs or issues the instrument, or for whose use or benefit it is made, signed or issued. Yet, appellant attempts to avoid this plainly expressed intention of the Legislature by the assertion that, although the language of Section 6 expressly applies to the documents and papers mentioned in Schedule A of the act, and although it is true the provision for the stamp tax in question is a portion of that schedule, yet it was not contained in Schedule A of the Revenue Act of 1862, but was embodied in another portion of that statute. The proposition that this express direction of Congress upon the subject in the present act should, therefore, be absolutely disregarded by the judicial branch of the Government, is certainly a novel one to be advanced in this Court. The act which lays the present tax is not the Act of 1862, but the Act of 1898. And if Congress took this provision from that position which it occupied in the former statute, and placed it in a new context in the latter, and if Congress altogether altered the phraseology of the section, and in that alteration substituted, for a clear provision that the express company should affix the stamp, an impersonal clause which merely declared that a stamp should be affixed to all bills of lading, we submit that it is to be presumed that there was some purpose in the mind of the Legislature, and that the change was not made vainly or without a definite object.

We regard the language, used by Lord Chief Justice COCKBURN in Reg. vs. Price, L. R., 6 Q. B., 411, at page 416, in construing an Act of Parliament, in point:

"When the Legislature, in legislating *in pari materia* and substituting certain provisions in that act for those which existed in the earlier statute, has entirely changed the language of the enactment, it must be taken to have done so with some intention and motive."

"It is a fundamental rule of construction that, if possible, force must be given to all the words used in a statute, and also, that when a previous statute is amended by an alteration of the terms used therein, it is to be presumed that it was the intent to alter the meaning of the previous act in that particular. * * * The natural presumption is that the phraseology of the statute was changed in order to change its meaning. The very fact that the prior act is amended demonstrates the intent to change the pre-existing law, and the presumption must be that it was intended to change the statute in all the particulars touching which we find a material change in the language of the act."

U. S. vs. Bashaw, 4 U. S. Apps., 360, 367; 1 C. C. A., 653.
Ricket vs. Met. R. Co., L. R., 2 H. L., 175, 207.
Reg. vs. Bullock, L. R., 1 C. C., 115.
Lawrence vs. King, L. R., 3 Q. B., 345, 348.
Reg. vs. Price, L. R., 6 Q. B., 411, 416.
Dickenson vs. Fletcher, L. R., 9 C. P., 1, 8.

Further supporting our contention is that portion of Schedule A, immediately following the impersonal clause requiring the attachment of a stamp:

"*Provided*, That but one bill of lading shall be required on bundles or packages of newspapers when enclosed in one general bundle at the time of shipment."

This clause was inserted in favor of newspaper publishers, and at their urgent solicitation, Congress evidently concluding that, in the process of adjust-

ment, the shipper would ultimately be the party to pay the tax.

And, finally, such construction has been placed upon the act by the Government itself, in an opinion dated August 16th, 1898, by its representative, an eminent jurist, Mr. Attorney General Griggs, rendered to Mr. John J. McCook, one of the counsel for this company:

"Replying to your letter of the 13th inst., I have the honor to advise you that the attitude taken by the Department of Justice with reference to the question as to which party, the shipper or the express company, under the War Revenue Bill, is required to furnish and pay for the revenue stamp which is required to be placed upon the manifest or bill of lading, is that this is a matter entirely between the shipper and the company. This office holds that, so far as the Government is concerned, it is only interested to know that the lawful tax is paid."

POINT IV.

Even if it were expressly provided that the tax was to be paid by the carrier, as appellant claims, the carrier may still increase his charges for transportation to cover the increased cost of operation which the tax has placed on him.

That this not only may but will be done is clearly demonstrated by this Court in the case of Almy vs. California, 24 Howard, 169. A State had there imposed a stamp tax upon certain bills of lading, and a ship master had been arrested under the act, a bill of lading issued by him not having been stamped. Chief-

Justice TANEY shows that "a tax or duty on a bill of lading, although differing in form from a duty on the article shipped, is in substance the same thing." And in Brown vs. Maryland, 12 Wheat., 419, Chief-Justice MARSHALL points out that a license tax imposed by a State upon the occupation of an importer is, in effect, a duty upon the thing imported, as it will certainly be added to the price of the article, and be paid by the consumer. And both these cases were decided expressly upon the ground that the tax, though in the one case laid upon the transaction and in the other upon the importer's occupation, would actually operate as a tax upon the goods and be paid by the consumer.

We do not at all mean to assert that the tax now under discussion is a direct tax. It would seem certainly to be a duty or excise tax laid upon the transaction of shipment. But we urge that it is of the essence of these taxes that they may be, and are shifted in the course of trade from one shoulder to another, and that this Court has recognized the fact.

The present Chief-Justice said, in Pollock vs. Trust Co., 157 U. S., 429, 558 ; 15 Sup. Ct. Rep., 673, 680 :

"Ordinarily, all taxes paid primarily by persons who can shift the burden upon some one else, or who are under no legal compulsion to pay them, are considered indirect taxes."

This is true of all taxes. Even direct taxes are very often shifted by the first payer to other shoulders, and this is even true of taxes upon land. The shopkeeper, for instance, in fixing the price at which he will sell his goods, must consider every element which enters into the cost of operating his business. In addition to the initial price of the goods, the salaries of salesmen, lighting, fuel and interest, the amount of his real and personal property tax must be shifted to the customer if he is to obtain a fair profit for the support of himself and his family.

It must be presumed that the Legislature was familiar with these very simple and primary principles

of taxation, and had some acquaintance in particular with the nature of the excise taxes and stamp duties it was laying.

With these considerations in mind appellant's contention falls to the ground (Point II. of his brief below) that "the imposition of this tax upon transportation carries with it an implied prohibition against the compulsory shifting of the burden by the carrier." For it appears that such a shifting is the prime and distinguishing feature of these taxes. It seems, therefore, to be a contradiction in terms to assert that an Act of Congress, by laying a stamp duty, *impliedly* prohibits the distinguishing characteristic of those duties.

What appellant means by a "compulsory shifting" appears in subdivision A, under this head of his brief below. He there asserts that the shifting of the tax would be brought about here by duress and against the will of the shipper, and that, admitting it may be shifted by assent of both parties, yet it is illegal here because the shipper pays the increased charge against his will.

It is difficult to follow the current of appellant's argument. The shipper, no doubt, would pay the carrier nothing if he had his will, and, if the definition of duress here outlined by appellant be correct, it is difficult to conceive of any commercial contract free from it. If the shipper is unwilling to pay a reasonable compensation to the carrier he is under no obligation to contract with him. But if he does contract with him he must pay the carrier his lawful rate. And if it be held that the carrier must pay the tax and his rate was reasonable before, it will certainly still be reasonable if it remains the same plus the amount of the tax levied on the transaction. And it is not duress if the carrier refuse to carry for the shipper, unless his lawful charge be paid.

Nor can the case be distinguished because the carrier exercises a public employment or because, on

that account, statute or common law requires him to charge a reasonable rate. The question of reasonable rate is one of fact to be determined by the cost of operation, and into this cost of operation the item of taxation necessarily enters. To assert, as appellant does in his brief, that the tax in question is a tax upon the profits of the express companies, and that, therefore, it should not be allowed to enter as an element into the cost of operation is, even granting his premise, a complete *non sequitur*. It is to assert that even if the tax upon the profits exceeded the amount of the profits themselves, as it might very certainly do in many instances, if the tax is to be forced upon the express company in the manner proposed, yet the company would have no right to treat that tax as an element entering into the cost of operation.

Suppose a railway company, where rates are not fixed by State law, pays a fixed percentage upon its gross receipts as a tax to the State, and that the payment of that percentage is just sufficient to wipe out its margin of profit, is it to be asserted that in the absence of any statutory regulation it would be a violation of the law for the railway to so far increase its transportation rates as to enable it to receive a reasonable reward for services rendered? It is well nigh impossible to lay any tax as a burden upon any individual or class of individuals in such a manner that the weight of part of it at least cannot be shifted to other shoulders, and it is no more an imposition upon the shipper for the carrier to raise his reasonable charges, if any new tax is laid upon him, than it is an imposition upon the customer that he has to bear a proportion of the shopkeeper's real and personal assessment when he deals at the shop.

The tax in the present instance, if it lies upon the shipper instead of upon the carrier, is divided up among so very many individuals, that it will fall with inconsiderable weight upon any. And this result is, of

course, the prime excellence of stamp taxes. As a matter of fact, if it did not fall upon him so lightly, the shipper would himself pass it along to a third party, to his consignee or buyer, for instance, and so it would be shifted from one person to another until it came to fall at last where it could most easily rest.

The appellant makes two further contentions which deserve consideration. They are:

(a) That the burden of proof rests upon the carrier to show that his rate is a reasonable one.

(b) That "the carrier has attempted directly and by compulsion to shift the burden upon the shipper as a tax, and not merely to make a reasonable revision of its rates."

In support of his first contention appellant cites as authority a number of cases in which rates have been fixed by the Legislature and the carrier is proceeding to secure a change in them. The Legislature has of course the right to fix reasonable rates for carriers, and, if the carrier complains of them, the burden is of course upon him to show that the statutory rate is not a reasonable one. These cases clearly have no application to the suit in hand.

The Interstate Commerce Act cases cited were investigations by the commission into railway rates. The statute makes it the duty of the commission to "investigate any complaint forwarded by the Railroad Commissioner or Railroad Commission of any State." An advance of rates was complained of and the commission making the statutory investigation said that "carriers making an advance in rates should be able to present a satisfactory justification of such advance." The Interstate Commerce Act has no application to express companies. The case last cited (Wells vs. Oregon Ry., 15 Fed. Rep., 561) contains nothing upon the question of burden of proof. But it does declare

the rule that a presumption exists that rates which have long prevailed are reasonable.

That presumption, we assert, prevails in this case. If, then, the rates which have for some years been settled are reasonable—bearing in mind that a reasonable rate is such a one as will allow the carrier a fair margin of profit over and above the cost of operation—and a tax of one cent be placed upon each shipment, which, if it be held the tax is to be paid by the carrier, constitutes a new item in the express company's cost of operation; it is surely reasonable that rates should be raised to compensate the carrier for such increased cost of doing business.

But appellant asserts, secondly, that the express companies are not making a new rate to cover the new cost of operation, but are in a bold and open manner making a horizontal increase in their charges of one cent upon each shipment, and thus throwing the tax, as a tax, upon the shipper. But it appears:

1. That the amount added to the charge for each shipment is the exact amount of the stamp tax on that shipment, and, hence, the exact additional cost of carrying the package shipped. This increase we contend it is fair and reasonable that each shipment should bear.

2. If the rate is to be increased it must, in each case, be increased by the amount of at least one cent, that being the smallest fractional coin we have. The shipper should not be heard to complain, if the increased charge on his own shipment is as small as it can be made, that larger shipments are not charged with a greater increase than this, nor does it appear that any such graduated scale of increase would be just.

3. Appellant also objects that the added charge "is not made a part of the rate, but is an additional and

distinct item." It appears from paragraph XII. of the agreed statement of facts on which appellant's bill was dismissed in the Circuit Court, that the express company is under contract with the railways carrying for it to pay over to them from 40 per cent. to 50 per cent. of its charges for transportation, and that, therefore, if the increase had taken the form of a technical raise in rates, instead of the addition of a separate item, the increased charge to the shipper must have been at least twice what it is. In view of these circumstances it seems unreasonable for appellant to raise this objection, and the rate, made up of two items as it is, is certainly fairer and more reasonable than such a technical increase.

We submit, therefore, that the advance in rates is a *bona fide*, fair, just and reasonable one, and one which the companies were at liberty to demand.

We have deemed it proper to discuss the questions of burden of proof and reasonableness of compensation, but, of course, these questions will not arise unless the Court shall hold that the duty of payment is directly imposed by the Act upon the carrier. Such construction, however, seems impossible under usual and natural rules of interpretation.

POINT V.

In the absence of express words the Court will not presume that Congress intended to lay an unusual and extraordinary burden upon a special occupation or class of persons, and, if the statute be ambiguous, that construction will be adopted which is most just and reasonable and which will avoid this conclusion.

In spite of the agrarian arguments which have been used in respect to this tax, there can be no doubt that the Act of 1898 was a revenue act. The great purpose of Congress in that act was certainly the raising of funds to meet a sudden and unexpected necessity which the war just entered upon had created. Doubtless the Legislature had also a secondary purpose in view, namely, that the burden should fall where it could most easily lie. As was said by Edmund Burke, a tax skillfully disguised will be accepted with tolerance and complacency, which, if openly applied, would cause a revolution.

"In the construction of the revenue laws special consideration is of course to be had of the purpose for which they are enacted. That purpose is to supply the government with a revenue. But in the proceedings to obtain this it is also intended that no unnecessary injury shall be inflicted upon the individual taxed. While this is secondary to the main object—the impelling occasion of the law—it is none the less a sacred duty. Care is taken in constitutions to insert provisions to secure the citizens against injustice in taxation, and all legislative action is entitled to the presumption that this has been intended."

Cooley on Taxation, 2nd Ed., p. 265.

It requires very little demonstration to show what a heavy and extraordinary burden this stamp tax, if enforced as appellant demands, would place upon the express business. It is estimated that the amount the tax produces annually from express shipments reaches a sum almost equal to three per cent. of the entire capitalization of the express companies in the country. The capital of Wells, Fargo & Company is $8,000,000; on which it has for some years paid an annual dividend of six per cent. The company does a banking as well as an express business, at least half of its capital being invested in that pursuit, and the dividends paid on its stock are derived to a large extent from that

source. On this banking business the company pays an annual tax of $14,000 under the new Revenue Act. In addition to this, like every important business house, it contributes a large annual sum under other provisions of the act. The company in its express department carried last year about 16,000,000 packages, on which the tax amounted to $160,000, a sum equal to two per cent. on its entire capital stock, and to more than three per cent. on that portion of it invested in the express business; in other words, equal to more than 50% of its annual profits as a carrier. Here, again, we would say that these facts are not pleaded, but Congress may be held to have known of them if it knew what appellant claims it did know.

We submit that it is not to be believed that Congress would thus single out any legitimate and useful business, especially a business the thorough performance of which is so necessary to the whole public, as the mark for such a tremendous and altogether unprecedented burden. And when it appears that this same tax, if distributed among all the shippers in a natural and logical way, would fall with imperceptible weight upon any of them, we submit that if the language be ambiguous, and we assert that it is not, the statute should be construed in such a way as to attain this just and reasonable result. The construction demanded by appellant would work great hardship and injustice, and certainly violate the spirit, if not the letter, of the constitutional provision enjoining uniformity in taxation. The true rule is that, while the intent must be sought, it is the intent as evidenced by the instrument itself. We cannot guess what Congress meant. We must construe what it meant by what it said.

"* * * It is, as I conceive, a general rule in the interpretation of all Statutes levying taxes or duties upon subjects or citizens not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out, although

standing upon a close analogy. * * * Burthens are not to be imposed, nor presumed to be imposed, beyond what the statutes expressly and clearly import."

STORY, J., in U. S. vs. Wigglesworth, 2 Story, 369, 373.

"I see no reason for being astute to introduce difficulties into an act of Parliament which read simply and, according to the ordinary rules, is free from them."

Lord COLERIDGE, C. J., in Iles vs. West Ham Com., 8 Q. B. Div., 69, 78.

"Nothing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion."

FULLER, C. J., in Lau Ow Bew vs. U. S., 144 U. S., 47; 12 Sup. Ct. Rep., 517, 520.

Ex parte Crow Dog, 109 U. S., 556; 3 Sup. Ct. Rep., 39.

Rector vs. U. S., 143 U. S., 457; 12 Sup. Ct. Rep., 511.

Varick vs. Briggs, 6 Paige (N. Y.), 323.

"It is presumed, in the construction of general words or dubious provisions, that there is no intention to depart from any established policy of the law."

Sutherland on Statutory Construction, Sec. 333.

"To compel individuals to contribute money or property to the use of the public without reference to any common ratio, and without requiring the sum paid by one piece or kind of property, or by one person, to bear any relation whatever to that paid by another, is to levy a forced contribution, not a tax, duty or impost, within the sense of these terms as applied to the exercise of powers by any enlightened or responsible government."

Woodbridge vs. City of Detroit, 8 Mich., 274, 301.

"Where rights are infringed, where fundamental principles are overthrown, where the general system of the laws is departed from, the legislative intention must be expressed with irresistible clearness to induce a court of justice to suppose a design to effect such objects."

MARSHALL, C. J., in U. S. vs. Fisher, 2 Cranch, 358, 390.

The construction of a statute which attributes to the Legislature the exercise of a doubtful power will not, in the absence of direct words, be readily adopted.

Mardre vs. Felton, Phil. Law. (N. Car.), 279.

The act should be so construed as to effectuate its purpose.

The chief purpose of the act was the raising of revenue to meet a sudden and severe demand. It is therefore desirable to determine in which way the act should be construed to give effect to the intent of Congress.

It is clear that if this tax be fastened upon the carrier in such a way that he is unable to shift it from him by raising transportation rates, he will be obliged to reduce the other costs of operating his business and to retrench in every possible way in order to meet the extra expense. No act could avoid this effect. No laws could prevent this retrenchment. The result would be that the carrier's routes which do not pay well would be given up altogether; that the whole service of the carriers would be seriously crippled, and that small carriers, or some of them, would be obliged to give up their business altogether. Not only would the public get poor service, but the revenue would be most seriously diminished. If then, the construction which appellant asks for is placed upon the act, its chief purpose will be defeated.

LAST POINT.

For these reasons it is respectfully submitted that to the questions certified by the Circuit Court of Appeals it should be answered that the War Revenue Act of June 13, 1898, imposes the tax upon the transaction of shipment, leaving it to be paid indifferently by either party thereto.

CHARLES B. ALEXANDER,
Of Counsel for Wells, Fargo and Company.